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The Gift of
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IMPRISONMENT
FOR
DEBT
UNCONSTITUTIONAL AND OPPRESSIVE,
PROVED FROM THE
FUNDAMENTAL PRINCIPLES
OF THE
British Constitution,

AND THE
RIGHTS OF NATURE.



By EDWARD FARLEY, Esq.

“ The Body of the Debtor shall always be free, that he
“ may serve the King in his wars, cultivate the ground,
“ and maintain his family.” THE CONSTITUTION.

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10.14.1935

INTRODUCTION.

THE great national evil of Imprisonment for Debt still continuing, carrying with it all those destructive consequences, which have already been pointed out in both Houses of Parliament, and which, at this time in particular, from the peculiar distresses of the middling and lower ranks of people, is now more felt, than when the kingdom was in a state of prosperity, calls aloud for the exertion of every independent mind to restore the constitution to its original purity, to reconcile the interests of the Creditor with the personal liberty of the Debtor, and to give the blessings of a free constitution equally alike to all the subjects of the British empire; that the man, whose personal labor tends to the support of government and the maintenance of his family, may be considered as

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sacred

sacred as the personal liberty of the Peer or Commoner, whose duty it is to preserve inviolate our excellent constitution. Any attempt therefore to call forth the attention of the public to the importance of the subject, will, I flatter myself, be deemed useful; and my past endeavors, though they have not had the success I could have wished, have nevertheless had that sanction and approbation given them, that encourages me to persevere, in hopes, like Mr. Wilkes in the case of General Warrants, I may see that power annihilated, which is contrary to those laws handed down to us by our glorious ancestors, and which it is our duty to leave uncorrupted to our posterity. Amongst other encouraging instances, the sentiments of Mr. Sawbridge, conveyed to me in the following letter, demand my particular thanks, and, as they are the honest ideas of an upright senator, deserve to be recorded.

“ S I R, *Olantigh, Aug. 29, 1785.*

“ I HAVE long been convinced, that Imprisonment for Debt was not only contrary to the
“ spirit

" spirit of this free constitution, but absolutely
 " against the letter of the law; however, a practice
 " immemorial, and the selfish disposition of a great
 " part of mankind, have given a sanction, which
 " it will be difficult to prevail against by the most
 " solid arguments. Should you nevertheless be
 " inclined to attempt the subject, you may de-
 " pend on any support in my power to assist you
 " with, as I feel it an object of great national
 " concern.

" I am,

" S I R,

" Your most obedient,

" humble servant,

" JOHN SAWBRIDGE.

" *Mr. Edward Farley.*"

I can now only assure the public, that my hum-
 ble endeavors shall be exerted to lay down the
 principles of our constitution; to shew how far
 the practice is repugnant to those principles; to
 point out the detriment that accrues to both Cre-
 ditor and Debtor from the present mode of Impri-

sonment for Debt ; and explain the most easy and beneficial law for recovery of Debts, with the least injury to the Debtor, agreeable to the spirit of the common law of the land.

THE AUTHOR.

IMPRI-

IMPRISONMENT FOR DEBT

UNCONSTITUTIONAL

THE Constitution of England is allowed by the greatest law-writers to be the noblest institution of law and justice in the known world.

The common law is the absolute perfection of reason, for nothing that is contrary to reason is consonant to law.

Common law is common right.

The law is the subject's best birthright.

The law respects the order of nature.

It always intendeth the best.

The law forceth no man to that which is impossible or vain.

The law provides a remedy for every wrong.

Where one hath several remedies, he may use which he will.

The law hath a delight in giving a remedy.

The law favoereth life, liberty, and dower.

Things of necessity are to be excepted out of a general law.

The ignorance of law cannot excuse.

The act of law never doth wrong.

Where the construction of any act is left to the law, the law will never construe it to work a wrong.

The agreement of parties cannot make that good which the law makes void.

No law can be abrogated but by act of parliament; but no act of parliament can repeal Magna Charta, or alter the fundamental principles of the British constitution.

The exposition of acts of parliament belongs to the Judges of the common law.

Statutes must be interpreted by reasonable construction, according to the meaning of the legislators.

They may be construed according to equity, especially when they give remedy for wrong, or are for expedition of justice, or to prevent delays,

delays, for law-makers cannot comprehend all cases.

The construction of a statute must be suppression of the mischief, and an advancement of the remedy.

It must be construed, that no innocent man may, by a literal construction, receive damage.

Acts of parliament that are against reason, or impossible to be performed, shall be judged void.

As the life of every man is under the protection of the law, and all wrongs against it are punished, so the members of every subject are under the protection of the King, that he may serve him and his country: therefore a rogue, for causing his companion to strike off his left hand, thereby to have a pretence to beg, was indicted and fined with his companion; and it is a grand maxim at common law, that the body of the Debtor shall always be free, that he may serve the King in his wars.

The reputation also of a person is under the protection of the law; for persons in their

natural capacity, absolutely and simply considered, have an interest in their good name.

By the common law, no sheriff, gaoler, or other of the King's ministers, ought to take any reward for doing his office, only of the King. *But since the common law has been encroached on, incredible extortions and oppressions have ensued.*

These rules form the ground-work of the common law of England; and the laws themselves, when construed according to their real meaning, are just and noble, giving a remedy for every wrong, and firmly securing to all alike life, liberty, and property. That great common-law writer, Bracton, says, "They are divinity built in the hearts of men." And it is the opinion of those great law-writers, Britton, Glanville, Littleton, and Sir Edward Coke, that where the subject is injured and has not redress, that it is not the fault of the law, but the false construction put on it by the Judges, whose wicked advice has often been a great hurt to many of our Kings. We find it recorded, 77th Inst. "That Tresilian, Chief Justice of the
" King's

“ King’s Bench, and five Judges more, with one
“ of the King’s Serjeants at Law, and one of the
“ King’s Counsel at Law, were executed at Ty-
“ burn as false traitors, by a judgment from the
“ most supreme court of judicature in the king-
“ dom, the parliament, for delivering their extra-
“ vagant, illegal, and extrajudicial opinions, that
“ the King might avoid a statute, ordinance, and
“ commission, which had been made for the safety
“ of both King and kingdom.” Thus we see
how cautious our ancestors were, to provide for the
safety and good of the King and subject; for
though they could not avoid leaving the explana-
tion of acts of parliament to the Judges, yet if
they gave extrajudicial opinions, they were liable
to be impeached, and executed as false traitors.
But the great evil of the present day is, that the
framing acts of parliament is entrusted to law-
yers, who in general so confound the letter with
the spirit of the law, that it often requires two acts
of parliament to explain one; and the intricacy of
the law at present is such, that men of plain under-
standings are afraid of calling the lawyers to ac-
count, and thereby suffer the most flagrant acts of
injustice,

injustice, oppression, and extortion, to be committed every day.

I come now to consider the Common Law of the land. King Alfred, being the first sole monarch after the heptarchy, with the advice of some wise men of his council, collected all the Saxon laws into one book, and commanded them to be observed throughout the whole kingdom, which before only affected certain parts thereof; and it was therefore properly called the Common Law, because it was common to the whole nation; and soon after it was called the Folc Right, *i. e.* the people's right, and Alfred was stiled Anglicarum Legum Conditor: this great monarch established the trial by jury, the great bulwark of English liberty; and so careful was he to watch over the liberties of his subjects, that we find, whenever the Judges oppressed his kingdom, that an investigation immediately took place, and no less than twelve Judges were executed in his reign as false traitors, for endeavouring to subvert the good laws of the land. His reign in general was glorious; there was no such thing as Imprisonment for Debt, with all its horrid train of extortion, oppression, disease, and
famine;

famine; law was administered in justice, and no officer under the King was suffered to take any thing for doing his office, save of the King only: no man could be committed to prison unless he had done that offence against the law which it was presumed he must be convicted of by twelve of his Peers; and so speedy was justice in this reign, and so great a national evil did imprisonment appear, even for felons, that the prisons were ordered by law to be cleared three times in the year at least.

After the death of this great prince, the succeeding kings introduced foreign laws and customs, too grievous to be borne, so that the kingdom was involved in continual wars for a great number of years, and the good laws of the land were frustrated by arbitrary power. In the reign of King John, that tyrant carried his arbitrary measures so far, that the Barons of the realm were obliged to take up arms against him; and, after long struggles for power on both sides, John, not being able to prevail against the Barons, sent for them to meet him at Runny Mead, between Staines and Windsor, when he there confirmed the rights and liberties of the subject, in a charter called Magna Charta,

Charta, as likewise the liberties of the forests ; but this security to the subject lasted in his reign no longer than whilst the Barons kept a check over his conduct.

King Henry the Third succeeded King John, and at his coronation took an oath, to restore to the people all their rights and liberties, and confirmed the charters granted by John ; but afterwards he acted the tyrant, and broke through the laws of the land, which compelled the Barons again to have recourse to arms ; and, having conquered the King's forces, they would not make peace unless their liberties were very solemnly confirmed : and the Barons having amended the charter of King John, King Henry, in the 37th year of his reign, came to Westminster-hall, and, in presence of the Nobility and Bishops, with lighted candles in their hands, Magna Charta was read, the King all that while laying his hand on his breast ; and at last solemnly swearing *faithfully and inviolably to observe all the things therein contained, as he was a Man, a Christian, a Soldier, and a King.* Then the Bishops extinguished the candles, and threw them on the ground, and every one said,

Thus

Thus let him be extinguished and sink in hell who violates this charter. Upon which the bells were set a ringing, and all persons by their rejoicing approved of what was done.

The solemn preamble of it is, That it is made for the honour of God, the exaltation of holy church, and amendment of the kingdom, &c. It is divided into 38 chapters, and the purport of it is as follows; but the 29th chapter being what relates chiefly to the liberty of the subject against illegal imprisonment, I have given the whole of that chapter.

MAGNA CHARTA. CHAP. I.

Ordains, That the Church of England shall be free; and all ecclesiastical persons enjoy their rights and privileges.

II.

Establishesthe rights of the nobility, knights' service, reliefs, &c.

III.

Establishesthe rights of heirs, and their being in ward.

IV. Directs

IV.

Directs the guardians for heirs within age, who are not to commit waste.

V.

Relates to the custody of lands, &c. of heirs, and delivery of them up when of age.

VI.

Relates to the marriage of heirs.

VII.

Appoints dower to women after the death of their husbands; a third part of the lands, &c.

VIII.

Relates to sheriffs and their bailiffs, and requires that they shall not seize lands for debt where there are goods, &c.

IX.

Grants to London, and all cities and towns, their ancient liberties.

X.

Orders that no distress shall be taken for more rent than is due.

XI.

The Court of Common Pleas is to be held in a certain place.

XII. Gives

XII.

Gives assizes for remedy on disseisin of lands, &c.

XIII.

Relates to the assizes of darrein presentment, brought by ecclesiastics.

XIV.

Enacts, That no freeman shall be amerced for a small fault, but in proportion to the offence, and by the oaths of lawful men.

XV.

No town shall be distrained to make bridges, &c. but such as of ancient time hath been accustomed.

XVI.

Is for repairing sea banks and sewers.

XVII.

Prohibits sheriffs, coroners, &c. from holding pleas of the crown.

XVIII.

Enacts, That the king's debtor dying, the king shall be first paid his debt.

XIX.

Directs the manner of levying purveyance for the king's house.

XX. Concerns

XX.

Concerns castle ward, where a knight was to be distrained for money for keeping his castle, on his neglect.

XXI.

Forbids sheriffs, bailiffs, &c. to take the horses or carts of any person, to make carriage, without paying for it.

XXII.

The king is to have lands of felons a year and a day, and afterwards the lord of the fee.

XXIII.

Requires weirs to be put down on rivers.

XXIV.

Directs the writ *Præcipe in Capite*, for lords against tenants offering wrong, &c.

XXV.

Declares that there shall be but one measure throughout the land.

XXVI.

Inquisition of life and member to be granted freely.

XXVII.

Relates to knights' service, petit serjeantry, and other ancient tenures.

XXVIII. Directs

XXVIII.

Directs that no man shall be put to his law on the bare suggestion of another, but by lawful witnesses.

XXIX.

No freeman shall be taken, or imprisoned, or disseised of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any way otherwise destroyed; nor we shall not pass upon him, but by the lawful judgment of his peers, or by the law of the land; we will sell to no man, we will not deny or defer to any, either justice or right.

XXX.

Requires that merchant strangers be civilly treated, &c.

XXXI.

Relates to the tenures coming to the king by escheat.

XXXII.

No freeman shall sell land, but so that the residue may answer the service.

XXXIII.

Patrons of abbeyes, &c. shall have the custody of them in time of vacation.

B

XXXIV. A

XXXIV.

A woman to have an appeal for the death of her husband.

XXXV.

Directs the keeping the county courts monthly, and also the times of holding the sheriff's tourn, and view of frank pledge.

XXXVI.

Makes it unlawful to give lands to religious houses in mortmain.

XXXVII.

Relates to escuage and subsidy to be taken as usual.

XXXVIII.

Ratifies and confirms every article of this great charter of liberties.

This sacred charter is the substance of common law, contracted in such a manner as to be signed and confirmed by a sovereign, and to be handed down to posterity as a noble record of English law and justice; it is declared in after statutes. "*The words of the Great Charter shall live for ever;*" the 25th statute of Edward the First says, "*The Great Charter shall be taken as the common law of the land;*" and

And 44 Statutes declare, "*That any thing contained in them, or any other act that militates against the Great Charter, shall be holden for nought.*"

And it is the duty of the Judges to see that no act of Parliament which oppresses the subject shall be suffered to continue in force. Sir William Blackstone, in his Commentaries, after observing the excellence of the first part of this charter, says, "*And lastly (which alone would have merited the title which it bears of the Great Charter) it protected every individual of the nation in the free enjoyment of his life, his liberty, and his property, unless declared to be forfeited by the judgment of his peers, or the law of the land.*"

It is this grand and important part of the charter, contained in the 29th chapter, which every honest man ought to labor to establish beyond the power of any person to set aside, "*the free enjoyment of life, liberty, and property.*" Liberty sweetens life, and protects property; it is the birthright of all mankind, and only want of virtue in the present day prevents all the subjects of the English nation from enjoying it: it is given by God, established by law, and confirmed

by reason: yet, in defiance of all law, sacred and human, men are imprisoned, and put to enormous expences, under the specious pretence of being held to bail for debt. A man is not sent to prison because he owes another money, but because he cannot find bail; for whether the man owes the money or not, is not the business of the office who issues the warrant, the officer who arrests the defendant, or the plaintiff's attorney who applies for the writ: and as for the judges of the different courts, they know nothing of the business, unless the defendant can afford, at a scandalous expence, to bring the plaintiff to trial; so that this great national evil goes on in this manner.—The bailiff takes the defendant to a lock-up house of his own, fleeces him of all he can, and then takes him to Newgate, without a shilling to help himself. In that horrid dungeon a man may linger out his life, without a bed to lie on, and the prison allowance one pennyworth of bread a day. The defendant is never brought before a court of justice, a judge, or magistrate, to be asked if he owes the money; all his crime is, that he cannot find bail; that is, he cannot procure two respectable

able housekeepers to enter into a bond to the sheriff's officer for double the amount the defendant is arrested for, and thereby make themselves liable, by any of those infamous quirks of the law permitted by our courts of justice, to pay a large sum of money, or lie in a gaol and have their families ruined: if therefore the defendant cannot find two men who will run the hazard of ruining themselves and families for him, he must go to prison, and feel all the horrors of famine, sickness, and want of that free air which is given by God to all his creatures as the greatest blessing, *although this man has not been convicted by his peers of any offence, nor has committed any crime against the law.* If a man is arrested, and does not owe any thing, his speediest method to obtain his liberty is to summon the plaintiff before a judge; he is then put to the expence of three summonses, at two shillings each to the judge's clerk, with the tedious delay of six days; during which time he must remain in a lock-up house, or a gaol, at an enormous expence; and employ an attorney to do the business for him: then, if the judge finds he does not owe any thing, the defendant is put to

the expence of filing common bail, and is discharged : so that, in the first and cheapest way a man can go to work to buy justice, it will cost him about ten pounds, and a week's imprisonment ; yet Magna Charta says, "*We will sell to no man, we will not deny or defer to any, either justice or right.*" A gentleman in Newgate, who was arrested by the wicked contrivance of a villain that he might live in infamy with the gentleman's wife, wrote to a judge the hardship of his case, and implored him to summon the parties before him, when he would see that he did not owe the pretended plaintiff any thing ; but this gentleman not having money to pay for the summonses, and employ an attorney, the judge would not concern himself about it ; and no doubt there are many applications of this kind without effect. One particular instance deserves to be recorded :—one of those pettifogging attornies with which this wretched metropolis swarms, being in company with one of his understrappers, saw a country gentleman in the street, whom he had a slight knowledge of ; he told his companion he could put a hundred pounds in his pocket ; the other answered, he

he would do any thing for such a sum, except murder. They then followed the gentleman to his inn; the attorney's assistant made an affidavit of three thousand pounds debt against the gentleman; the attorney issued the writ, and had the gentleman presently arrested; and when carried to a lock-up house, he felt the fatal consequence of walking London streets, *the seat of Law and Justice*; he could not procure bail for double so large a sum, and therefore sent a gentleman to a judge to represent his case; the judge told this friend that nothing could be done out of the usual course of business. The country gentleman was so frightened to stay longer in confinement, that he sent for the pretended plaintiff's attorney, and purchased his liberty at the expence of two hundred pounds, and happy to get out of London at any rate, whilst these two limbs of the law enjoyed the beneficial effects of Imprisonment for Debt. Circumstances of this nature not only frequently happen, but there are bloody and fatal effects flowing from this great national evil, which cry to the throne of God for justice; but of them I shall treat hereafter: at present I think

proper to contrast the suspicion of debt with the suspicion of felony. When an accuser has by his oath obtained a warrant from a magistrate, the accused is immediately brought before the magistrate, where the accuser is obliged to attend; and if he cannot make it appear that the accused has committed such an offence against the law that he must be tried by his peers, the magistrate must discharge him without a shilling expence; whilst the man who is arrested on suspicion of debt (not being able to procure bail) must suffer a long imprisonment, and pay a large sum of money to obtain justice; his plaintiff is not obliged to appear any where; he gives John Doe and Richard Roe for his security, and has the liberty by means of a worthless attorney, of proceeding in a court of law without being seen himself. The declaration delivered to the defendant is made up of fiction, that is a disgrace to a court of justice to suffer; and then, if the defendant is in prison, judgment goes against him by default. Surely this is a proceeding that even the bloody tribunal of the Inquisition never attempted, that of passing judgment on a man who could not be present, and was not

not able to pay any one to attend for him: surely the least shew of justice requires that the defendant should be brought into court, and be heard, whether he owes any thing to the plaintiff or not; but the courts know, that the voice of the injured and oppressed would rouse the feelings and indignation of every honest mind at the scenes of extortion and oppression that are daily practised by all parties concerned in keeping up this ruinous practice of Imprisonment for Debt; therefore the man that has been fleeced of all the money that can be got out of him, must lie in a gaol, without any means of doing himself justice: a felon, on the contrary, is brought before a court of justice, and is tried legally by his peers, whether he is guilty or not, and that as soon as possible. The supposed debtor may lie in gaol two terms (perhaps six months) before the creditor need declare against him, and twelve months before he need charge him in execution. For a supposed debt of ten pounds, a man may pine with famine and sickness his whole life in Newgate; a felon, for house-breaking and robbery, is sent for transportation for seven years, and found in necessities; a felon that

that has money may find friends to procure him a free pardon; but the debtor, who is poor, is condemned, unheard, to lie in gaol for his life; yet the judges are commanded to execute justice in mercy; and God says, "*Ye shall do no unrighteousness in judgment.*" The 14th chapter of Magna Charta says, "No free-man shall be amerced for a small fault;" instead of which, men are fleeced and imprisoned without any fault. The common law says, "The prisons shall be all cleared three times in the year at least." The prisons for debtors are never clear.

I come now to consider the grand principle of holding a man to bail. The common law ordains, that a person charged on oath with having committed a crime shall find bail, to be security for him to appear to take his trial at the next sessions of gaol delivery: and certainly it is on the noble principle of justice and mercy; for it would be a hard case was every man, charged on the bare oath of another before a magistrate, to be sent to prison for two or three months before he could take his trial: and so cautious is the law to guard the

the liberty of the subject, that it says, "excessive bail shall not be taken;" and that grand security to liberty, the *Habeas Corpus Act*, is a check on the malice of prosecutors and the ignorance of magistrates. If therefore the law is so tender of the personal liberty of a supposed felon, how much more of a debtor, when it declares, "the body of the debtor shall always be free, that he may maintain his family." The only principle of law which can in any shape countenance holding a debtor to bail, is, on the presumption that the debtor is going to run away with his creditor's property: and the practice of holding to bail was established for the benefit of the city of London; but the law required that the creditor should make oath, that the debtor was leaving the kingdom, and had no property which he could attach; then, on his giving securities to prove this circumstance and his debt, he was permitted to attach the debtor's person; but if the debtor made it appear in a court of law, that he was not going to quit the kingdom, and that it was a malicious arrest, the court would allow him heavy damages, and he might indict his plaintiff for perjury. This law,

law, the foundation of Imprisonment for Debt, was chiefly intended for a remedy against foreign merchants, and was called a Statute Merchant. It was not supposed an Englishman would ever leave the kingdom for debt; and it is my real opinion that the great number of fugitives now in foreign countries for fear of a prison, would be glad to come home and use their best endeavors to pay their creditors: the law therefore in this case, which ought to be a remedy for a wrong, *is the very cause of the wrong.* A learned judge of the present day says, a month's imprisonment to a tradesman is a thousand pounds detriment to him, so much does it hurt his credit: and the city of London, for whom in particular the law of arrest was made, have established a very just maxim, "*Send a rogue to prison, and you are sure to get nothing by him; send an honest man there, and you prevent him from paying you.*" And certainly there is in the city a great number of respectable traders; but I am sorry to say that even some of them are capable of one act of great injustice, and that is, before a meeting of creditors takes place, one principal creditor will oblige his debtor to
give

give him a bond and judgment to pay him his full debt, and then persuade the rest of the creditors to take five shillings in the pound.

I must now take notice of the connivance of our courts of law, in encouraging the greedy and avaricious to arrest. The law which says the creditor shall make oath that his debtor is going to quit the kingdom, they set aside, and substitute another oath, which only says, the defendant owes such a sum: and such protection they give to litigious creditors, that if a man swears to ever so large a debt, and can prove no more than one shilling on trial, the defendant cannot indict for perjury: thus a man had a gentleman arrested for one hundred thousand pounds; and the defendant, not being able to bail it, suffered twelve months imprisonment before he could bring his plaintiff to trial; which when he had done, the plaintiff could only prove a debt of nineteen shillings; and the defendant had no remedy at law for having suffered twelve months imprisonment, his expence of bringing his plaintiff to trial, and the loss of a place he held under government of three hundred pounds a year income. The law of arrest
says,

says, the plaintiff shall give two securities to prosecute; but the courts, to encourage litigation, substitute the fictitious names of John Doe and Richard Roe. The law says, the plaintiff shall immediately declare the exact circumstances of the case; but, to the disgrace of justice, he is allowed two terms, perhaps six months, and the declaration the greatest part made up of fiction, is ten times longer than it need be, and, with stamps and fees, costs from two to five guineas, which ought only to cost as many shillings. The courts, to encourage the debtor to spend money in litigation, allow of pleas foreign to the business before the court, and writs of error, where no error has been committed, to prolong the cause; yet the law says, "*every injured man shall have speedy remedy.*" And the very ground of justice in this and all other countries is, that no man shall be condemned unheard; yet in defiance to the law of God and man, in direct opposition to the 29th chapter of Magna Charta, and the just principles of the common law, judgment goes by default, when the sheriff's jury, who try this cause, know very well that the defendant is in custody, and cannot attend
the

the court; yet they give a cruel judgment against him, no less than that he shall linger the remainder of his life in prison, and his family feel every distress, in consequence of being deprived of his support. The law says, "*it gives a remedy for every wrong;*" but here the plaintiff loses his debt by this unjust judgment against his debtor, and the debtor his liberty, whilst the lawyers make a charge of more than the debt amounts to. The law takes a delight in giving a remedy; this law commits a wrong to both parties. The law says, "*Acts of parliament that are against reason, or are impossible to be performed, shall be judged void.*" The law of arrest for debt is contrary to reason, and is impossible to be performed, because it says it is for recovery of debt; instead of which, it loses the debt, and does a further injury to the creditor; and it is impossible to be performed, because it ordains that the debtor shall give good bail, which it is not in his power to do. The law says, "*Acts of parliament shall be construed in equity.*" The acts respecting arrest for debt are construed to work iniquity. The law says, "*Acts of parliament shall be so construed, that no innocent man may by a*
literal

"*literal construction receive damage;*" but these acts respecting debt condemn an innocent man without hearing his defence. The law says, it intendeth the best. This law acts the very worst.

I must now make some remarks on the creditors who in general arrest; for every one knows there is another way to proceed, that of suing by copy of writ. There are a number of wholesale dealers, brewers, &c. who give credit to distressed persons, that cannot keep up their payments: the law of arrest obliges this distressed debtor, through fear, to pay the avaricious creditor he is most afraid of, although it is in prejudice to his other creditors, or himself: the consequence then is, that in process of time, when by this creditor's sending him bad commodities, he is no longer able to keep up his payments, this creditor, who has been his hurt, arrests him; then we find, in case a meeting of creditors is called, this one that holds the body in confinement will not put himself on an equal footing with other creditors, and the debtor must either sell all his other creditors' property, and pay this one his full, and perhaps extortionable demand, or go to prison; and in case

a commission of bankruptcy should take place then, after all the effects of the debtor are taken from him, the creditor who first arrested him holds him in prison for his life, because he will not sign his certificate, although he has been his ruin; and the bankrupt laws allow of a creditor refusing to sign a certificate, although he cannot give any reason why he refuses. But of the bankrupt laws I shall treat more hereafter. I wish, in this place, to satisfy the minds of all men, that the holding to bail for debt is in the first principle impossible to be done in many cases; and next, that it is repugnant to the principles of interest, justice, and mercy. I am sorry to say, that, in this commercial country, did the law give a power to sell the body of the debtor to be a galley slave for the benefit of the creditor, I do not think that a man possessed of the noblest sentiments of humanity could prevail on self-interested people to alter the law: but I endeavour to convince mankind, that the creditor and debtor are both injured by the practice of Imprisonment for Debt, and mean to substantiate it by respectable evidence before Parliament; when I doubt not the consent

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of mankind will be given to abolish so great a national evil.

The best personal security of a debtor to his creditor is when he is employed in the best manner to his own advantage. Credit is given with a view of profit, and the better a creditor uses a debtor, the more likelihood there is of his being able to pay: and if a debtor is insolvent, the least expence he is put to in giving up his effects the better for the creditors; but now I will shew, by arresting and holding to bail, the detriment it is to both creditor and debtor, in the following remarkable instance.

A retail grocer, who made shift to raise a small sum, went to a wholesale grocer, and paid in part for a parcel of goods, and procured one month's credit for the remainder; when the month expired, the debtor was not ready with his money, but told the creditor he would pay him part, and begged of him to send him some more goods: this the other promised to do; but when he had got all the money the debtor could raise, he refused to give him any more credit, and arrested him for the remainder of the debt. The debtor being acquainted

quainted with two other retail grocers, this trio made it a point to bail one another on all occasions; therefore the sheriff's officer got a guinea for a bail bond, and an attorney was employed to defend the action. The plaintiff was told he had got security for his money; but, meeting the defendant soon after, he asked him when the money would be paid? who replied, that the two lawyers would talk that matter over in the court of King's-Bench, in the meantime he could not be uneasy, as he had the security of the two sheriffs, who were both gentlemen of property and character. This passed for the present: when term came, the bail was justified; the wholesale grocer, who did not understand law, but went by the advice of his attorney, was surprised the money was not ordered by the court to be paid, and understanding from his attorney that the defendant had put in a foreign plea, the next time he met the retail grocer, he told him he had said an untruth in court, for he knew he had received his tea and sugar. The defendant told him, that it was the language of lawyers in court, but that now, as he had the security of the four judges of the court

of King's-Bench, who were allowed to be upright in giving judgment, he surely could not be uneasy about his debt. The plaintiff, however, was not satisfied, and went to his attorney to know when the money would be paid: the attorney told him, that he should soon take the defendant's goods in execution for debt and costs. However, after some time, the defendant's attorney put in a writ of error, which when the plaintiff heard of, the next time he met the defendant, he told him he had employed a rogue of a lawyer, who had said there was an error committed, when he knew there was none, and that it was a just debt. The defendant told him, that it was only the language of lawyers in courts of justice; but as he believed there would be a little bill filed in Chancery, he supposed the proceedings in a court of equity were more easy to be understood. The wholesale grocer, who loved money, and did not understand either law or equity, was terribly alarmed at the expences; and, after consultation with his attorney and friends, he told the retail grocer he would forgive him the debt if he would pay both lawyers. The defendant answered, it
was

was gone too far now, and that it depended upon law, whether he should not have execution against him for not following up his cause; for it seems, the defendant's attorney had an opinion that the plaintiff was of too greedy a disposition to spend a hundred pounds in law, to recover a debt of twenty pounds; and therefore was in hopes of taking the plaintiff's goods in execution for costs of suit; but, to the disappointment of both lawyers, the two grocers settled in this manner: each paid his own lawyer forty pounds, and the plaintiff gave the defendant a release from the debt.

This is the consequence of arresting a man for debt who has two friends to bail him, and money to employ an attorney to defend the action. The affront of arrest sticks so deep in the breast of an Englishman, that he thinks himself justifiable in using every means the law allows to defend his personal liberty, although at the ruin of his creditor; and certainly if a creditor has two remedies at law, and takes that which is the least detrimental to the debtor, he prevents, in the first instance, that spirit of revenge which is apt to rise when he uses the most oppressive; and in the

second place, he does not hinder his debtor from being able to go about business: thus we see, that when a debtor is served with a copy of writ, the creditor is in general paid without the ruin of the debtor.

I must now take notice of the kind of people that bail and justify. Distressed tradesmen in general form a connection in keeping open their shops, by drawing bills upon one another, in being bail for each other, and having an attorney to defend all actions brought against them; gentlemen in general hire their bail, and where they have plenty of money the bailiff will take their word, till it comes to an execution, and will find bail and justify for them. Now, it seems, the Jews pay more attention to the law of God than the Christians to the gospel of Christ. God says, "*And if thou sell aught unto thy neighbour, or buyest aught of thy neighbour's hand, ye shall not oppress one another.*" Christ says, "*Love one another, as I have loved you.*" If a Christian is arrested, and would even make oath that he did not owe the plaintiff any thing, yet he could not find any loving Christians to bail him; but for a little money

money he may find a Jew that will give him his liberty. The Jew sees the Christians oppress one another, contrary to the law of God, and pay no attention to the command of their Saviour; and the courts of law ought to think themselves under great obligation to the Jews, for if bail could no how be procured, all the prisons in England would not be able to hold the great number of persons arrested for debt; and to build new prisons, would shock the feelings even of Christians, and open their eyes to the enormity of the evil. Mr. Howard says, It is a maxim, *a prison pays no debts*; he says he is sure *it mends no morals*: but as mention has been made in the House of Lords, that this gentleman had thrown out the idea of solitary confinement; if such should be taken under consideration, I would propose that a wall should be built round the borough of Southwark, because it might be then possible to find a room for every single debtor, and that this humane gentleman should have the care of them; when we might expect, from his extensive knowledge on the subject, that at least the prisoners would be provided with decent apparel, food, and lodging. In

the meantime, however, I cannot help remarking the conduct of our courts in admitting Jew bail, and yet affect to despise them. The following, among other circumstances, is a conversation that passed in court.

Counsel. My lord, I have nineteen affidavits against this bail; they consist of debts owing by this man to sundry people, for lodging, clothes, mending, victuals, drink, &c.

Judge. Mr. L——, do you hear this?

Jew. My lord, I cannot help having dealings with people who will impose upon me, and therefore I must take time to do myself justice; I presume your lordship does not like imposition?

Counsel. My lord, he has already taken tolerable good time, for some of them have been owing two years.

Judge. Well, but Mr. L——, how do you make yourself out to be a man of two thousand pounds property?

Jew. My lord, I have now in my hand good bills

bills and notes of hand to that amount, and your lordship is welcome to inquire into it.

Judge. Take the bail.

This is the general mode of proceeding in justifying bail in court; but when it is done in chambers, the plaintiff's attorney has a handsome fee to wink at such bail as the defendant's attorney may be able to procure: but what must appear a very extraordinary case, when the bail suffer themselves to be fixed for the debt, the plaintiff must find them before he can touch the defendant.

It becomes now necessary to take notice of the writs issued by the three courts of Common Pleas, King's-Bench, and Exchequer, for debt.

COURT OF COMMON PLEAS.

ORIGINAL.

" George the Second, by the grace of God, of
" Great-Britain, France, and Ireland, king, de-
" fender of the faith, and so forth; to the sheriff
" of Oxfordshire, greeting. Command Charles
" Long, late of Burford, gentleman, that justly
" and without delay he render to William Burton
" two

" two hundred pounds, which he owes him, and
 " unjustly detains, as he saith. And unless he
 " shall so do, and if the said William shall make
 " you secure of prosecuting his claim, then sum-
 " mon by good summoners the aforesaid Charles,
 " that he be before our justices at Westminster, on
 " the octave of St. Hilary, to shew wherefore he
 " hath not done it : and have you there then the
 " summoners and this writ. Witness, Sir John
 " Willes, knight, at Westminster, the twenty-third
 " day of January, in the twenty-eighth year of
 " our reign."

SHERIFF'S RETURN.

" Pledges of } J. Doe, { Summoners of the within
 " prosecution, } R. Roe, { named Charles Long.
 " R. Morris,
 " H. Johnson."

COURT OF KING'S BENCH.

BILL OF MIDDLESEX.

Middlesex, } " The sheriff is commanded that
to wit. } " he take Charles Long, late of
 " Burford,

“ Burford, in the county of Oxford, if he may be
“ found in his bailiwick, and him safely keep, so
“ that he may have his body before the king at
“ Westminster, on Wednesday next after fifteen
“ days of Easter, to answer William Burton, gen-
“ tleman, of a plea of trespass: [And also to a bill
“ of the said William against the afore said Charles,
“ for two hundred pounds of debt, according to
“ the custom of the court of the said lord the king,
“ before the king himself to be exhibited:] and
“ that he have there then this precept. Witness,
“ Sir Dudley Ryder, knight, at Westminster, the
“ 18th day of April, in the eighth year of our
“ reign.”

SHERIFF'S RETURN.

“ By virtue of this writ to me directed, *I have*
“ *taken the body* of the within named Charles Long,
“ which I have ready at the day and place within
“ contained, according as by this writ is com-
“ manded me.”

COURT

COURT OF EXCHEQUER.

QUO MINUS.

“ George the Second, by the grace of God, of
“ Great Britain, France, and Ireland, king, de-
“ fender of the faith, and so forth; to the sheriff
“ of Berkshire, greeting. We command you, that
“ you omit not, by reason of any liberty of your
“ county, but that you enter the same, and take
“ Charles Long, late of Burford in the county of
“ Oxford, gentleman, wheresoever he shall be
“ found in your bailiwick, and him safely keep, so
“ that you may have his body before the barons of
“ our Exchequer at Westminster, on the morrow
“ of the Holy Trinity, to answer William Burton,
“ our debtor, of a plea, that he render to him
“ two hundred pounds which he owes him, and
“ unjustly detains; *whereby* he is the *less* able to
“ satisfy us the debts which he owes us at our said
“ Exchequer; as he saith he can reasonably shew
“ that the same he ought to render; and have you
“ there this writ. Witness, Sir Thomas Parker,
“ knight, at Westminster, the sixth day of May,
“ in the twenty-eighth year of our reign.”

SHERIFF'S

SHERIFF'S RETURN.

“ By virtue of this writ to me directed, I have
“ taken the body of the within named Charles
“ Long, which I have ready before the barons
“ within written, according as which it is com-
“ manded me.”

PROCESS OF EXECUTION.

WRIT OF FIERI FACIAS.

“ George the Second, by the grace of God, of
“ Great Britain, France, and Ireland, king, de-
“ fender of the faith, and so forth; to the sheriff
“ of Oxfordshire, greeting. We command you,
“ that of the goods and chattels within your baili-
“ wick of Charles Long, late of Burford, gentle-
“ man, you cause to be made two hundred pounds
“ debt, which William Burton, lately in our court
“ before us at Westminster, hath recovered against
“ him; and also fifty pounds, which were adjudged
“ in our court before us to the said William, for
“ his damages which he hath sustained, as well by
“ occasion of the detention of his said debt, as for
“ his

“ his costs and charges to which he hath been put.
“ about his suit in this behalf, whereof the said
“ Charles Long is convicted, as it appears to us of
“ record: and have that money before us in three
“ weeks from the day of the Holy Trinity, where-
“ soever we shall then be in England, to render to
“ the said William of his debt and damages afore-
“ said: and have there then this writ. Witness,
“ Sir Thomas Denison, knight, at Westminster,
“ the nineteenth day of June, in the twenty-ninth
“ year of our reign.”

SHERIFF'S RETURN.

“ By virtue of this writ to me directed, I have
“ caused to be made of the goods and chattels of
“ the within written Charles Long two hundred
“ and fifty pounds, which I have ready before the
“ lord the king at Westminster at the day within
“ written, as it is within commanded me.”

WRIT OF CAPIAS AD SATISFACIENDUM.

“ George the Second, by the grace of God, of
“ Great Britain, France, and Ireland, king, de-
“ fender

“ fender of the faith, and so forth; to the sheriff
“ of Oxfordshire, greeting. We command you,
“ that you take Charles Long, late of Burford,
“ gentleman, if he may be found in your baili-
“ wick, and him safely keep, so that you may have
“ his body before us in three weeks from the Holy
“ Trinity, wheresoever we shall then be in Eng-
“ land, to satisfy William Burton for two hun-
“ dred pounds debt, which the said William Bur-
“ ton hath recovered against him in our court be-
“ fore us, and also fifty pounds, which were ad-
“ judged in our said court before us to the said
“ William Burton, for his damages which he hath
“ sustained, as well by occasion of the detention of
“ the said debt, as for his costs and charges to
“ which he hath been put about his suit in this
“ behalf, whereof the said Charles Long is con-
“ victed, as it appears to us of record: and have
“ you there then this writ. Witness, Sir Thomas
“ Denison, knight, at Westminster, the nineteenth
“ day of June, in the twenty-ninth year of our
“ reign.”

SHERIFF'S

SHERIFF'S RETURN.

" By virtue of this writ to me directed, I have
" taken the body of the within named Charles
" Long, which I have ready before the lord the
" king at Westminster, at the day within writtten,
" as within is commanded me."

I must now request the serious attention of the reader to a few remarks, and then relate what the proceedings ought to be, according to law, for recovery of debt.

Sir Edward Coke, first chief justice of the court of Common Pleas, and afterwards of the King's Bench, has clearly laid down how proceedings for debt ought to go forwards, according to the principles of the constitution; and Sir William Blackstone is of the same opinion. The court of Common Pleas is the only general court in the kingdom for pleas of debt between subject and subject; all lesser courts, such as the Sheriff's Court, Court Hundred, &c. have their appeal to that highest court of law for recovery of debt. Magna Charta
says,

says, *the court of Common Pleas shall be held in a certain place*; therefore it is fixed at Westminster, as the centre of the kingdom, that every person may know where to apply for justice; for before that time it used, like the court of King's Bench, to remove at the pleasure of the justices of the court, or of the king: now, on the contrary, the court of King's Bench, in which it was presumed the king was present in person, was obliged to move after the king; so that all writs issuing out of the court of King's Bench run thus, *bring the body before the king himself, wherever he shall then be*; therefore, that no suits for debt should be carried on in this bench of justice, it is ordained by statute law, "*no pleas shall follow our court.*" And the reason must be obvious to every man, that it must have been a great detriment to persons suing for debt to follow the king from county to county, before they could obtain justice; besides, the court of King's Bench being a court established to take cognizance only of crimes and trespasses, it would have interfered with its jurisdiction to have intruded upon it actions of debt.

The court of Common Pleas being then the

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general

general court in the kingdom to which all appeals for debt ought to be made, and having a jurisdiction over all county courts ; now let us seriously consider the just and equitable spirit of the original writ issuing out of the court of Common Pleas, which I have before given at large ; it says to the sheriff, *Command Charles Long, that without delay he render to William Burton two hundred pounds, which he owes him and unjustly detains, as he saith ; then if he refuses, and the said William gives good security to prosecute his cause, then summon by good summoners the aforesaid Charles, that he may be before our justices at Westminster, to shew why he hath not done it ; and have you there then the summoners and this writ.*

Surely this just, open, and fair manner of proceeding, can never be made better by our present law-makers ; here is reason on the very face of the writ without fiction. William complains to the court, that Charles owes him two hundred pounds, and unjustly detains it ; the court orders the sheriff to command Charles, in the name of the king's justices, to pay William the money, or else he will summon him to shew cause why he does not do it. Charles refuses to pay ; on which the sheriff,

riff, believing William to be a man of good fame, puts in J. Doe and R. Roe for his security to prosecute; but the sheriff had a discretionary power respecting the security he was to take to prosecute, for he was to take good security; but every reasonable man will allow, that as the debtor was only to be summoned into court, the sheriff might, without any hurt to justice, put pledges the fictitious names of J. Doe and R. Roe; and it was meant that both parties should be present in court; but, in consideration that a man might not be able to speak in court, or that his concerns were more urgent elsewhere, he was allowed to appear by his friend or attorney. The sheriff then having pledged J. Doe and R. Roe for the plaintiff William, he proceeds to send two summoners to the defendant Charles, commanding him to appear before the king's justices at Westminster, on a certain day, to answer to William on his complaint. If the defendant appeared, then his appearance is recorded; and he puts in sureties for his future appearance and obedience the same imaginary persons that were pledges for the plaintiff's

prosecution, J. Doe and R. Roe, and then the cause proceeds thus:

The defendant before he pleads is allowed one imparlance, to see if he can end the matter amicably by talking with the plaintiff, which custom is supposed to have arisen from a principle of religion, in obedience to the precept of the gospel, "*Agree with thine adversary quickly whilst thou art in the way with him,*" and has a reference to the Roman law of the twelve tables, which expressly directed *the plaintiff and defendant to make up the matter while they were going to the prætor*. The defendant may also demand oyer of the bond or speciality upon which the action is brought, *i. e.* to have it read to him, the defendant in time past being supposed not capable of reading it himself; after which the whole is entered verbatim upon record, and the defendant may make objection to any part of it not stated in the plaintiff's declaration. When these proceedings are over, the defendant must put in his plea or excuse.

Pleas are of two sorts, dilatory pleas and pleas to the action. Dilatory pleas are to the jurisdiction of the court, alledging it ought not to hold
plea

plea of this injury, it arising beyond sea, &c. or to the disability of the plaintiff, by reason whereof he is incapable to commence or continue his suit, as that he is an alien, enemy, outlawed, excommunicated, attainted of treason, or under *præmunire*, not *in rerum natura* (being only a fictitious person), an infant, a *femme covert*, or a monk professed, or in *abatment*, according to the circumstances of the case: but it seems very just, that by statute 4 and 5 Ann. c. 16. “*No dilatory plea is to be admitted without affidavit made of the truth thereof.*”

A plea to the action, is to answer to the merits of the case; this is done by confessing or denying the truth of the complaint: a plea of set off, or *cognovit actionem*, is where the plaintiff is indebted in part; if the plaintiff sues for ten pounds due on a note of hand, the defendant may set off nine pounds due to himself, for merchandize sold to the plaintiff; and in case he pleads such set off, he must pay the balance into court. Statutes 2 George II. c. 22. and 8 George II. c. 24. enacts, “*That where there are mutual debts between the plaintiff and defendant, one debt may be set against the other,*

" and either pleaded in bar, or given in evidence upon
" the general issue at the trial, which will operate in
" payment, and extinguish so much of the plaintiff's
" demand." Pleas that totally deny the cause of
complaint, are either the general issue or a special
plea in bar. The general issue, or general plea, is
what denies at once the whole declaration, as *nil*
debit, he owes nothing; *non est factum*, it is not his
deed; or *non assumpsit*, he made no such promise.
Special pleas are various, according to the circum-
stances of the defendant's case, as in real actions,
a general release, or a fine, or an accord, arbitra-
tion, or some other fact which precludes the
plaintiff from his action: also the defendant may
plead the statutes of limitations.

Issue, *exitus*, being the end of all the pleadings,
is founded either upon matter of law or matter of
fact. An issue upon matter of law is called a
demurrer, and it confesses the fact to be true, as
stated by the opposite party; but denies that by the
law arising upon those facts, any injury is done to
the plaintiff; the opposite party avers there is,
which is called a *joinder in demurrer*. The judges
of the court determine this matter.

Issue:

Issue of fact, is where the fact only, and not the law, is disputed; and when he that denies the fact declared by his antagonist, tenders his issue, he says, "*and this he prays may be inquired of by the country;*" and his antagonist does the like; which done, the issue is said to be joined, both parties having agreed to rest the fate of the cause upon the truth of the fact in question: then the court awards a writ of *venire facias* upon the roll or record, commanding the sheriff, that he cause to come here on such a day twelve free and lawful men, *liberos et legales homines*, of the body of the county, by whom the truth of the matter may be better known, and who are neither of kin to the aforesaid Charles nor the aforesaid William, to recognize the truth of the issue between the said parties.

We will now suppose all previous steps to be regularly settled, and the cause to be called on in court; the record is then handed to the judge to peruse and observe the pleadings, and what issue the parties are to maintain and prove, while the jury is called and sworn. To this end the sheriff returns his compulsive process, the writ of

habeas corpora, or *distringas*, with the pannel of jurors annexed, to the judge's officer in court.

When a sufficient number of persons impannelled appear, they are then separately sworn well and truly to try the issue between the parties, and a true verdict to give according to the evidence.

All witnesses that have the use of their reason are to be received and examined, except such as are infamous, or such as are *interested* in the event of the cause; all others are *competent* witnesses, though the jury, from other circumstances, will judge of the credibility.

When the evidence is gone through on both sides, the judge, in presence of the parties, the counsel, and all others, sums up the whole to the jury, omitting all superfluous circumstances, observing wherein the main question and principal issue lies, stating what evidence has been given to support it, with such remarks as he thinks necessary for their direction, and giving them his opinion in matters of law arising from that evidence.

The jury, after the proofs are summed up, unless the case is very clear, withdraw from the bar

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to confider of their verdict; and, in order to avoid intemperance and caufeless delay, are to be kept without meat, drink, fire, or candle, unless by permission of the judge, till they are all unanimously agreed.

When they are all unanimously agreed, the jury return back to the bar, and by their foreman deliver their public verdict; which we will suppose, in the present instance, they have found the issue for the plaintiff in two hundred pounds debt, and fifty pounds damages: the judgment is then entered on the roll, and execution immediately follows, by the court awarding the writ of *fieri facias*, commanding the sheriff to sell so much of the defendant's property as will pay the plaintiff his debt and damages. The sheriff's return is, that he has obeyed the writ, and he has the money ready to deliver to the plaintiff.

Thus begins and ends the just, equitable, and legal way of proceeding for recovery of debt, established by the constitution of England, and is commented on by Sir Edward Coke, and other great law-writers, as the most beneficial law that
human

human judgment could devise for both creditor and debtor; and, in order that justice might be brought home to every man's door, besides the county courts, the court hundred was supposed sufficient to give remedy for wrong in all cases of debt; but if either party was not satisfied, he had then his option of moving his cause to the county court, or court of Common Pleas; or the plaintiff might begin in which court he thought would be most likely to do him justice: and if we give the proceedings a serious consideration, they must appear to every reasonable mind calculated to answer the end for which they were designed. To the lawyers, who have done more harm to this country than the plague, the pestilence, or the sword of tyrants, we owe alone the breach of this excellent institution of law and justice; but before I proceed to make more remarks, it is necessary for me to lay down the law as at present is mostly practised by our courts, when conclusions can best be drawn.

The court of Common Pleas concurs with the courts of King's-Bench and Exchequer in using fiction and forgery, lest they should not have their share

share of business. In order to give the reader a clear insight to the matter, I have given, as follows, the proceedings on an action originating in the court of Common Pleas, removed by writ of error to the King's-Bench:

The original writ orders the sheriff to command Charles Long to pay William Burton two hundred pounds which he owes him and unjustly detains, as he saith; or else summon him to appear on such a day before the king's justices at Westminster, to shew why he hath not done it.

Sheriff's Return. (forged)

" Pledges of } J. Doe, { Summoners of the within
 " prosecution, } R. Roe, { named Charles Long.

" R. Morris,

" H. Johnson."

Then follows *Writ of Pone.*

" George the Second, by the grace of God, of
 " Great Britain, France, and Ireland, king, de-
 " fender of the faith, and so forth; to the she-
 " riff of Oxfordshire, greeting. Put by gage and
 " safe pledges, Charles Long, late of Burford,
 " gentleman,

" gentleman, that he be before our justices at
 " Westminster, on the octave of the Purification
 " of the Blessed Mary, to answer to William Bur-
 " ton of a plea, that he render to him two hun-
 " dred pounds, which he owes him, and unjustly
 " detains, as he saith; and to shew wherefore he
 " was not before our justices at Westminster on
 " the octave of St. Hilary, as he was summoned;
 " and have then there the names of the pledges,
 " and this writ. Witness, Sir John Willes, knight,
 " at Westminster, the twenty-third day of Ja-
 " nuary, in the twenty-eighth year of our reign."

Sheriff's Return. (forged.)

" The within named Charles } Edward Leigh,
 " Long is attached by Pledges. } Robert Tanner."

Then follows, *Distringas*.

" George the Second, by the grace of God, of
 " Great Britain, France, and Ireland, king, de-
 " fender of the faith, and so forth; to the sheriff
 " of Oxfordshire, greeting. We command you,
 " that you distrain Charles Long, late of Burford,
 " gentleman, by all his lands and chattels within
 " your

“ your bailiwick, so that neither he, nor any one
“ through him, may lay hands on the same, until
“ you shall receive from us another command
“ thereupon, and that you answer to us of the
“ issues of the same; and that you have his body
“ before our justices at Westminster, from the day
“ of Easter in fifteen days, to answer to William
“ Burton, of a plea, to render to him two hundred
“ pounds, which he owes him and unjustly de-
“ tains, as he saith; and to hear his judgment of
“ his many defaults. Witness, Sir John Willes,
“ knight, at Westminster, the twelfth day of Fe-
“ bruary, in the twenty-eighth year of our reign.”

Sheriff's Return, *Nil.* (forged.)

“ The within named Charles Long hath no-
“ thing in my bailiwick whereby he may be
“ distrained.”

Then follows, *Capias ad respondendum.*

“ George the second, by the grace of God, of
“ Great Britain, France, and Ireland, king, de-
“ fender of the faith, and so forth; to the sheriff
“ of Oxfordshire, greeting. We command you,
“ that

" that you take Charles Long, late of Burford,
 " gentleman, if he may be found in your baili-
 " wick, and him safely keep, so that you may
 " have his body before our justices at Westmin-
 " ster, from the day of Easter in five weeks, to
 " answer to William Burton, gentleman, of a plea,
 " that he render to him two hundred pounds,
 " which he owes him and unjustly detains, as he
 " saith; and whereupon you have returned to our
 " justices at Westminster, that the said Charles
 " hath nothing in your bailiwick whereby he may
 " be distrained: and have you there then this
 " writ. Witness, Sir John Willes, knight, at
 " Westminster, the sixteenth day of April, in the
 " twenty-eighth year of our reign."

Sheriff's Return, *Non est inventus.* (forged.)

" The within named Charles Long is not found
 " in my bailiwick."

Then follows, *Testatum capias.*

" George the second, by the grace of God, of
 " Great Britain, France, and Ireland, king, de-
 " fender of the faith, and so forth; to the sheriff
 " of

“ of Berkshire, greeting. We command you, that
 “ you take Charles Long, late of Burford, gentle-
 “ man, if he may be found in your bailiwick, and
 “ him safely keep, so that you may have his body
 “ before our justices at Westminster, on the mor-
 “ row of the Holy Trinity, to answer to William
 “ Burton, gentleman, of a plea, that he render to
 “ him two hundred pounds, which he owes him
 “ and unjustly detains, as he saith; and where-
 “ upon our sheriff of Oxfordshire hath made a re-
 “ turn to our justices at Westminster, at a certain
 “ day now past, that the aforefaid Charles is not
 “ found in his bailiwick; and thereupon it is testi-
 “ fied in our said court, that the aforefaid Charles
 “ *lurks, wanders, and runs about* in your county:
 “ and have you there then this writ. Witnefs,
 “ Sir John Willes, knight, at Westminster, the se-
 “ venth day of May, in the twenty-eighth year of
 “ our reign.”

Sheriff's Return, *Cepi Corpus*.

“ By virtue of this writ to me directed, I have
 “ taken the body of the within named Charles
 “ Long, which I have ready at the day and place
 “ within

" within contained, according as by this writ it is
" commanded me."

SPECIAL BAIL *on the Arrest of the Defendant,*
pursuant to the *Testatum capias*.

Bail Bond to the Sheriff.

" Know all men by these presents, that we
" Charles Long, of Burford, in the county of Ox-
" ford, gentleman, Peter Hammond, of Bix, in
" the said county, yeoman, and Edward Tomlin-
" son, of Woodstock, in the said county, inn-
" holder, are held and firmly bound to Christo-
" pher Jones, esquire, sheriff of the county of
" Berks, in four hundred pounds, of lawful money
" of Great Britain, to be paid to the said sheriff,
" or his certain attorney, executors, administra-
" tors, or assigns; for which payment well and
" truly to be made, we bind ourselves, and each
" of us by himself, for the whole and in gross, our
" and every of our heirs, executors, and admini-
" strators, firmly by these presents, sealed with
" our seals. Dated the fifteenth day of May, in
" the

" the twenty-eighth year of the reign of our so-
" vereign lord George the Second, by the grace of
" God, king of Great Britain, France, and Ire-
" land, defender of the faith, and so forth; and in
" the year of our Lord one thousand seven hun-
" dred and fifty-five.

" The condition of this obligation is such, that
" if the above bounden Charles Long do appear
" before the justices of our sovereign lord the
" king, at Westminster, on the morrow of the
" Holy Trinity, to answer William Burton, gen-
" tleman, of a plea of debt of two hundred
" pounds, then this obligation shall be void and
" of none effect, or else shall be and remain in
" full force and virtue.

" Charles Long, (L.S.)

" Peter Hammond, (L.S.)

" Edward Tomlinson, (L.S.)

" Sealed and delivered, being
" first duly stamped, in the
" presence of

" Henry Shaw,

" Timothy Griffith."

Recognizance of Bail, before the Commissioners.

" You Charles Long, do acknowledge to owe
 " unto the plaintiff four hundred pounds; and
 " you Peter Hammond, and Edward Tomlinson,
 " do severally acknowledge to owe unto the same
 " person, the sum of two hundred pounds a piece,
 " to be levied upon your several goods and chat-
 " tels, lands and tenements, upon condition that,
 " if the defendant be condemned in this action,
 " he shall pay the condemnation, or render him-
 " self a prisoner in the Fleet for the same; and if
 " he fail so to do, you Peter Hammond and Ed-
 " ward Tomlinson do undertake to do it for him."

Trinity Term, 28 Geor. 2.

Bail Piece. *Berks,* } " On a Testatum capias
 to wit. } " against Charles Long,

" late of Burford, in the county of Oxford, gen-
 " tleman, returnable on the morrow of the Holy
 " Trinity, at the suit of William Burton, of a plea
 " of debt of two hundred pounds.

" The bail are Peter Hammond, of Bix, in the
 " county

“ county of Oxford, and Edward Tomlinson, of
 “ Woodstock, in the said county, yeoman.

“ Richard Price,	} The party himself in 400l. Each of the bail in 200l.
“ attorney for the	
“ defendant.	

“ Taken and acknowledged the twenty-eighth
 “ day of May, in the year of our Lord one thou-
 “ sand seven hundred and fifty-five, *de bene esse*,
 “ beforem

“ Robert Grove,

“ One of the commissioners.”

The Record as removed by Writ of Error.

“ The lord the king hath given in charge to his
 “ trusty and well beloved Sir John Willes, knight,
 “ his writ closed in these words: [*Writ of error.*]
 “ George the Second, by the grace of God, of
 “ Great Britain, France, and Ireland, king, de-
 “ fender of the faith, and so forth; to our trusty
 “ and well beloved Sir John Willes, knight,
 “ greeting. Because in the record and process,
 “ and also in the giving of judgment, of the plaint
 “ which was in our court, before you and your
 “ fellows,

“ fellows, our justices of the bench, by our writs
“ between William Burton, gentleman, and Charles
“ Long, late of Burford, in the county of Oxford,
“ gentleman, of a certain debt of two hundred
“ pounds, which the said William demands of the
“ said Charles, manifest *error* hath intervened, to
“ the great damage of him the said William,
“ as we from his complaint are informed; we
“ being willing that the *error*, if any there be,
“ should be corrected in due manner; and that
“ full and speedy justice should be done to
“ the parties aforesaid in this behalf, do command
“ you, that if judgment thereof be given, then
“ under your seal, you do distinctly and openly
“ send the record and process of the plaint aforesaid,
“ with all things concerning them and this
“ writ, so that we may have them from the day of
“ Easter, in fifteen days, wheresoever we shall then
“ be in England; that the record and process
“ aforesaid being inspected, we may cause to be
“ done thereupon, for correcting that *error*, what
“ of right and according to the law and custom
“ of our realm of England ought to be done.
“ Witness ourself, at Westminster, the twelfth day
“ of

" of February, in the twenty-ninth year of our
 " reign."

Chief Justice's Return.

The record and process, whereof in the said writ mention is made, follow in these words, to wit:

" Pleas at Westminster, before Sir John

" Willes, knight, and his

" brethren justices of the *The Record.*

" lord the king at Westminster,

" of the term of the Holy Trinity, in

" the twenty-eighth year of the reign of

" the lord George the Second, by the grace

" of God, of Great Britain, France, and

" Ireland, king, defender of the faith, &c.

Oxon, } " Charles Long, late

to wit. } " of Burford, in the

Writ:

" county of Oxford, gentleman, was summoned

" to answer William Burton, of Yarnton, in the

" said county, gentleman, of a plea, that he rep-

" der unto him two hundred pounds, *Declaration,*

" which he owes him, and unjustly *or count, or*

" detains, as he saith, and where- *bond.*

“ upon the said William, by Thomas Gough, his
 “ attorney, complains, that whereas on the first
 “ day of December, in the year of our lord one
 “ thousand seven hundred and fifty four, at Ban-
 “ bury, in this county, the said Charles, by his
 “ writing obligatory, did acknowledge himself to
 “ be bound to the said William in the said sum
 “ of two hundred pounds of lawful money, of
 “ Great Britain, to be paid to the said William,
 “ whenever after the said Charles should be
 “ thereto required; nevertheless the said Charles
 “ (although often required) hath not paid to the
 “ said William the said sum of two hundred
 “ pounds, nor any part thereof; but hitherto alto-
 “ gether hath refused, and doth still refuse, to
 “ render the same; wherefore he saith that he is
 “ injured, and hath damage to the value of ten

“ pounds: and thereupon he brings

Proferit in curia. “ suit [and good proof.] And he

“ brings into court the writing ob-
 “ ligatory aforesaid, in form aforesaid; the date
 “ whereof is the day and year before-mentioned:
 “ and the aforesaid Charles, by Richard Price his

“ attorney,

attorney, comes, and defends the
 " force and injury, [when and where
 " it shall behove him] and craves oyer of the said
 " writing obligatory, and it is read unto him [in
 " the form aforefaid]; he likewise craves oyer of
 " the condition of the said writing,
 " and it is read unto him in these
 " words: " The condition of this
 " obligation is such, that if the
 " above bounden Charles Long, his
 " heirs, executors, and administrators, and every
 " of them shall, and do from time to time, and at
 " all times hereafter, well and truly stand to, obey,
 " observe, fulfil, and keep the award, arbitrament,
 " order, rule, judgment, final end, and deter-
 " mination of David Stiles, of Woodstock, in the
 " said county, clerk, and Henry Bacon, of Wood-
 " stock aforefaid, gentleman, (arbitrators indiffe-
 " rently nominated, and chosen by and between the
 " said Charles Long and the above-named William
 " Burton, to arbitrate, award, order, rule, judge,
 " and determine, of all and all manner of actions,
 " cause or causes of actions, suits, complaints, debts,
 " duties, reckonings, accounts, controversies, tref-
 " passes,

" passes, and demands whatsoever, had, moved, or
 " depending, by and between the said parties,
 " for any matter, cause, or thing, from the be-
 " ginning of the world, until the day of the
 " date hereof); which the said arbitrators shall
 " make and publish, of or in the premises, in
 " writing, under their hands and seals, or other-
 " wise by word of mouth, in the presence of
 " two credible witnesses, on or before the first day
 " of January next ensuing the date hereof; then
 " this obligation to be void and of none effect,
 " or else to be and remain in full force and
 " virtue." " Which being read and heard, the

Imparlance. " said Charles prays leave to im-

Continuance. " parl therein here, until the octave
 " of the Holy Trinity, and it is grant-

" ed unto him. The same day is given to the said
 " William Burton, here, &c.; at which day, to
 " wit, on the octave of the Holy Trinity, here
 " come, as well the said William Burton, as the
 " said Charles Long, by their attornies aforesaid;
 " and hereupon the said William prays that the
 " said Charles may answer to his writ and count

Plea. " aforesaid: and the said Charles
 " defends the force and injury, when
 " &c.

“ &c. and faith, that the said William ought not
 “ to have or maintain his said action against him,
 “ because he faith that the said David Stiles and
 “ Henry Bacon, the arbitrators before named in
 “ the said condition, did not make
 “ any such award, arbitrament, or- *No such a-
ward.*
 “ der, rule, judgment, final end, or
 “ determination of, or arbitrament of or in the
 “ premises above specified in the said condition;
 “ and this he is ready to verify. Wherefore he
 “ prays judgment, whether the said William ought
 “ to have or maintain his said action thereof against
 “ him; and that he may go thereof without a
 “ day. And the aforesaid William faith, that for
 “ any thing above alledged by the
 “ said Charles in pleading, he ought *Replication
setting forth
an award.*
 “ not to be precluded from having
 “ his said action thereof against him: because he
 “ faith, that after the making of the said writing
 “ obligatory, and before the said first day of Ja-
 “ nuary, to wit, on the twenty-sixth day of De-
 “ cember, in the year aforesaid, at Banbury afore-
 “ said, in the presence of two credible witnesses,
 “ namely, John Dew, of Charlbury, in the county
 “ aforesaid,

“ aforesaid, and Richard Morris, of Wytham, in
“ the county of Berks, the said arbitrators under-
“ took the charge of the award, arbitrament, or-
“ der, rule, judgment, final end, and determination
“ aforesaid, of and in the premises specified in the
“ condition aforesaid; and then and there publish-
“ ed their award, by word of mouth, in manner
“ and form following, that is to say: The said ar-
“ bitrators did award, order, and adjudge, that he
“ the said Charles Long should forthwith pay to
“ the said William Burton the sum of seventy-five
“ pounds, and that thereupon all differences be-
“ tween them, at the time of the making the said
“ writing obligatory, should finally cease and de-
“ termine. And the said William further saith,
“ that although he afterwards, to wit, on the sixth
“ day of January, in the year of our lord one
“ thousand seven hundred and fifty-five, at Ban-
“ bury aforesaid, requested the said Charles to pay
“ to him the said William the said seventy-five
Protestands. “ pounds, yet (by protestation that
“ the said Charles hath not stood
“ to, obeyed, observed, fulfilled, or kept any
“ part of the said award, which by him the said
“ Charles

" Charles ought to have been stood to, obeyed,
" observed, fulfilled, and kept): for further plea
" therein he saith, That the said Charles the said
" seventy-five pounds to the said William hath not
" hitherto paid; and this he is ready to verify.
" Wherefore he prays judgment, and his debt
" aforesaid, together with his damages occasioned
" by the detention of the said debt to be adjudged
" unto him, &c. and the aforesaid *Demurrer.*

" Charles saith, that the plea afore-
" said, by him the said William, in manner and
" form aforesaid above in his replication pleaded,
" and the matter in the same contained, are in no
" wise sufficient in law for the said William to
" have or maintain his action aforesaid there-
" upon, against him the said Charles; to which
" the said Charles hath no necessity, nei-
" ther is he obliged by the law of the land, in
" any manner to answer; and this he is ready
" to verify. Wherefore for want of a sufficient
" replication in this behalf, the said Charles, as
" aforesaid, prays judgment; and that the afore-
" said William may be precluded from having
" his

" his action aforefaid thereupon againſt him,

Causes of de- " &c. And the ſaid Charles ac-
murrer. " cording to the form of the ſtatute,

" in that caſe made and provided,

" ſhews to the court here the cauſes of demurrer

" following; to wit: That it doth not appear by the

" replication aforefaid, that the ſaid arbitrators

" made the ſame award in the preſence of two

" credible witneſſes, on or before the ſaid firſt day

" of January, as they ought to have done, ac-

" cording to the form and effect of the condition

" aforefaid; and that the replication aforefaid is

" uncertain, inſufficient, and wants form. And

Joinder in de- " the aforefaid William ſaith, that

murrer. " the plea aforefaid by him the ſaid

" William, in manner and form

" aforefaid above in his replication pleaded, and

" the matter in the ſame contained, are good and

" ſufficient in law for the ſaid William to have

" and maintain the ſaid action of him the ſaid

" William thereupon againſt the ſaid Charles;

" which ſaid plea, and the matter therein con-

" tained, the ſaid William is ready to verify

" and

" and prove as the court shall award: and because
" the aforesaid Charles hath not answered to that
" plea, nor hath he hitherto in any manner deni-
" ed the same, the said William as before prays
" judgment, and his debt aforesaid, together with
" his damages occasioned by the detention of that
" debt, to be adjudged unto him, &c.

" And because the justices here will *Continuance.*
" advise themselves of and upon the premises, be-
" fore they give judgment thereupon, a day is
" thereupon given to the parties aforesaid here,
" until the morrow of All Souls, to hear their
" judgment thereupon, for that the said justices
" are not yet advised thereof. At which day here
" come as well the said Charles, as the said Wil-
" liam, by their said attornies; and because the
" said justices here will further advise them-
" selves of and upon the premises, before they
" give judgment thereupon, a day is further
" given to the parties aforesaid here, until the
" octave of St. Hilary, to hear their judgment
" thereupon, for that the said justices here are
" not yet advised thereof. At which day here come

" as

" as well the said William Burton, as the said

Opinion of the court. " Charles Long, by their said at-
" tornies. Wherefore the record

" and matters aforesaid having been
" seen, and by the justices here fully understood,

" and all and singular the premises being exa-

" mined, and mature deliberation being had there-

" upon ; for that it seems to the said justices here,

" that the said plea of the said William Burton

Replication " before in his replication pleaded,

insufficient. " and the matter therein contained,

" are not sufficient in law, to have

" and maintain the action of the aforesaid Wil-

" liam against the aforesaid Charles ; therefore it

" is considered, that the aforesaid

Judgment " William take nothing by his writ

for the defen- " aforesaid, but that he and his

dant, Querens " pledges of prosecuting, to wit,

nihil capiat " John Doe, and Richard Roe, be

per breve. " in mercy for his false complaint ; and that the

" aforesaid Charles go thereof with-

" out a day, &c. And it is farther

Amercement " considered, that the aforesaid

costs. " Charles

" Charles do recover against the aforefaid Wil-
 " liam eleven pounds and seven ſhillings, for his
 " coſts and charges by him about his defence in
 " this behalf ſuſtained, adjudged by the court
 " here to the ſaid Charles, with his conſent, ac-
 " cording to the form of the ſtatute in that caſe
 " made and provided; and that the
 " aforefaid Charles may have exe- *Execution.*
 " cution thereof, &c.

" Afterwards, to wit, on Wedneſday next, after
 " fifteen days of Eaſter in this ſame
 " term, before the lord the king *General error*
 " at Weſtminſter, comes the afore- *assigned.*
 " ſaid William Burton, by Peter Manwaring his
 " attorney, and ſaith, that in the record and pro-
 " ceſs aforefaid it is manifeſtly erred in this; to-
 " wit, that the judgment aforefaid was given in
 " form aforefaid for the ſaid Charles Long,
 " againſt the aforefaid William Burton, when by
 " the law of the land judgment ſhould have
 " been given for the ſaid William Burton againſt
 " the ſaid Charles Long; and this he is ready to
 " verify. And the ſaid William prays the writ
 " of

" of the said lord the king, to warn *Writ of scire*
 " the said Charles Long to be be- *facias, to bear*
 " fore the said lord the king, to *errors.*
 " hear the record and process aforesaid; and it is
 " granted unto him, by which the sheriff aforesaid
 " is commanded that [by good and lawful men
 " of his bailiwick], he cause the aforesaid Charles
 " Long to know, that he be before the lord the
 " king, from the day of Easter in five weeks,
 " [wheresoever he shall then be in England] to
 " hear the record and process aforesaid, [if it shall
 " have happened that in the same any error shall
 " have intervened]; and further [to do and re-
 " ceive what the court of the lord the king shall
 " consider in this behalf]: the same day is
 " given to the aforesaid William Burton; at
 " which day, before the lord the king at West-
 " minster comes the aforesaid William Burton,
 " by his attorney aforesaid: and
 " the sheriff returns, that by vir-
 " tue of the writ aforesaid, to him
 " directed, he had caused the said Charles Long
 " to know, that he be before the lord the king,

Sheriff's re-
turn, scire
feci.

" ad

" at the time aforefaid, in the faid writ contained,
 " by John Den and Richard Fen, good, &c. as by
 " the fame writ was commanded him : which faid
 " Charles Long, according to the warning given
 " him in this behalf, here cometh by Thomas
 " Webb, his attorney. Whereupon the faid Wil-
 " liam faith, that in the record
 " and procefs aforefaid, and also in *Error assign-*
 " the giving of judgment aforefaid, *ed afresh.*
 " it is manifeftly erred, alledging the error afore-
 " faid by him in the form aforefaid alledged, and
 " prays that the judgment aforefaid for the error
 " aforefaid, and others in the record and procefs
 " aforefaid being, may be reverfed, annulled, and
 " entirely for nothing eftimated ; and that the faid
 " Charles may rejoin to the errors aforefaid, and
 " that the court of the faid lord the king here
 " may proceed to the examination, as well of the
 " record and procefs aforefaid, as of the matter
 " aforefaid above for error assigned. And the faid
 " Charles faith, that neither in the
 " record and procefs aforefaid, nor *Rejoinder, in*
 " in the giving of the judgment *nullo est er-*
 " aforefaid in any thing is there *raturum.*

F

" erred :

“ erred: and he prays in like manner, that the
“ court of the said lord the king here may pro-
“ ceed to the examination, as well of the record
“ and process aforesaid, as of the matters aforesaid
“ above for errors assigned. And

Continuance. “ because the court of the lord the
“ king here is not yet advised
“ what judgment to give of and upon the pre-
“ mises, a day is therefore given to the parties
“ aforesaid, until the morrow of the Holy Trinity,
“ before the lord the king wheresoever he shall
“ then be in England, to hear their judgment of
“ and upon the premises; for that the court of the
“ lord the king here is not yet advised thereof.

“ At which day, before the lord the
Opinion of the court. “ king, at Westminster, came the

“ parties aforesaid, by their attor-
“ nies aforesaid; whereupon as well the record
“ and process aforesaid, and the judgment there-
“ upon given, as the matters aforesaid by the said
“ William above for error assigned, being seen, and
“ by the court of the lord the king here being
“ fully understood, and mature deliberation being
“ thereupon had, for that it appears to the court
“ of

“ of the lord the king here, that in the record and
 “ process aforesaid, and also in giving of the
 “ judgment aforesaid, it is mani-
 “ festly erred; therefore it is con-
 “ sidered that the judgment afore-
 “ said, and others in the record
 “ and process aforesaid, be reversed,
 “ annulled, and entirely for no-
 “ thing esteemed; and that the
 “ aforesaid William recover against
 “ the aforesaid Charles his debt
 “ aforesaid, and also fifty pounds
 “ for his damages which he hath sustained, as well
 “ on occasion of the detention of the said debt, as
 “ for his costs and charges unto
 “ which he hath been put about
 “ his suit in this behalf, to the said
 “ William, with his consent, by the court of the
 “ lord the king here adjudged. And the said
 “ Charles in mercy.”

*Judgment of
the Common
Pleas reversed.*

*Judgment for
the plaintiff.*

Costs.

*Defendant
amerced.*

Then follows writ of *capias ad satisfaciendum* (given before at large) commanding the sheriff to take the body of Charles Long, and have him before the lord the king wheresoever he shall then be

in England, to satisfy William Burton, for two hundred pounds debt, which the said William hath recovered in court; as also fifty pounds for damages and costs of suit.

Before I make my remarks on the foregoing proceedings of the courts of Common Pleas and King's Bench, I must observe that the courts have different ways of giving sanction to litigation: it seems the first attack on the liberty of the subject for debt was by the King's Bench writ of *trespass*; which when it held the body, the debtor was told no *trespass* would be proved, but that he should be held till he paid such a debt: the debtor, if he could raise the money, no matter with what loss to himself, for the sake of liberty generally paid it; so that creditors had here, as they thought, a certain way of getting money, without the debtor being able to question the demand. The court of Common Pleas finding their business likely to be transferred to the King's Bench, invented the writ of *trespass, quare clausum fregit*, for breaking the plaintiff's

plaintiff's close, *vi et armis*, which by common law subjected the defendant's person to be arrested by writ of *capias*, so that the two courts were then upon an equal footing. But the Court of Exchequer finding their power circumscribed in reaping advantage from the taking the defendant's person, issued their writ of *quo minus* to all persons, although the writ itself says, that is to bring the defendant to answer to the plaintiff, because the plaintiff owes the king money; which, on account of his not paying, he is not able to pay the king: but seeing the other two courts make use of falsehood for the sake of gain, they did not see why they were not to have a share of the profits; therefore the three shops of justice hung out their signs of writ of *quare clausum fregit*, bill of Middlesex for *trespass*, and *quo minus*; and now all comers were invited, Swearing was made easy, on the supposition that the plaintiff might have made a mistake, and the three shops laboured hard which should do the most business, inventing all the low paltry arts of fiction and extortion; abusing each other for being rogues, and not understanding the common law of the land; threatening impeachments, and even hint-

ing to work under price. Thus went on the practice,—when lo! by statute 13, Car. II. it is ordained that the true cause of action should be expressed in the body of the writ or process. This act operating on the courts in a *violent* manner, made them contrive every possible means of preserving their lucrative business; therefore, in the plenitude of their wisdom, they contrived a clause of *ac etiam : and also to a bill of debt*, which is politely practised by two courts, taking the defendant for felony, and only holding him for debt. It seems before this, that poor Sir Edward Coke, making opposition to the court of King's Bench issuing the writ of *trespass* to catch debtors contrary to law, got himself turned out of the chief justiceship of the Common Pleas;—with all the meanness and servility that a lawyer is capable of, he solicited his friends, and at length got himself seated as chief justice of the court of King's Bench; but loving money better than justice, he said they had turned him out of the *warm kitchen*, and placed him in the *cold hall*; however, well knowing whence the grist arose, he encouraged any kind of plaintiff to sue in his court for debt, and did not scruple to issue the writ of *trespass*, till
he

he made the *cold ball* as comfortable as the *warm kitchen*; and being famous for his publication of that great common-law writer, Littleton, and his own notes illustrating many passages, it has been deemed by other judges since his time an affront to Coke's consequence to differ from him in opinion; and honesty they have ever esteemed unworthy the profession of the law: and as this statute of Charles the Second (*though contrary to common law*) gives a sanction to their proceedings, the iniquitous business of arrest goes on without remorse. But they could not avoid an *interloper*. It seems that the court of the Marshalsea was originally holden before the steward and marshal of the king's house; and was instituted to administer justice between the king's domestic servants, that they might not be drawn into other courts, and thereby the king lose their service; it was formerly held in, though not a part of, the *Aula Regis*; and when that was subdivided, remained a distinct jurisdiction: holding plea of all trespasses committed within the verge of the court, where only one of the parties is in the king's domestic service (in which case the inquest shall

be taken by a jury of the country); and of all debts, contracts and covenants, where both of the contracting parties belong to the royal household, and then the inquest shall be composed of men of the household only. By the statute of Ric. II. ft. 1. c. 3. in affirmance of the common law, the verge of the court in this respect extends for twelve miles round the king's place of residence; and no writ of error lay from it to the King's Bench, but only to Parliament. But this court being ambulatory, and obliged to follow the king in all his progresses, so that by the removal of the household, actions were frequently discontinued, and doubts having arisen as to the extent of its jurisdiction, king Charles I. in the sixth year of his reign, by his letters patent created a new court of record, called the *Curia Palatii*, or Palace Court, to be held before the steward of the household, and knight marshal, and the steward of the court, or his deputy; with jurisdiction to hold plea of all manner of personal actions whatsoever, which shall arise between any parties within twelve miles of his majesty's palace of Whitehall. This court is now held once a week, together with the ancient court

court of Marshalsea, in the borough of Southwark. At the time I allude, of the courts of Common Pleas and King's Bench having established proceedings by their fictitious writs of *trespass*, and *on the case*, we find that although they acquiesced in the court of Exchequer issuing their writ of *quo minus*, and taking part of their profits, yet they could not conceive that the knight marshal, being originally a military officer, had the power of interfering, being contrary to the constitutional law for plea of debt between subject and subject; they therefore determined to call this new made judge to an account. Accordingly, it seems the chief justice of the Common Pleas, the chief judge of the King's Bench, and the chief baron of the Exchequer being assembled, they sent a message to the knight marshal to request his presence on business of importance. Who having complied; they asked him, *who made him a judge?* He answered to the two chiefs of the King's Bench and Exchequer, as good authority as made them in matters of debt; and that as for the chief justice of the Common Pleas, it was shameful in him, who ought to be the guardian of the civil rights

of

of the people, to connive at falshood and extortion in other courts, that he might promote it in his own; and with a martial air he told them, if they got money by locking up men for *fools*, he would have his share for locking up *cowards*, who had degenerated from the noble blood of their ancestors. The force of the knight marshal's argument had its due effect on the three judges; they asked their new made brother pardon: and since that time, the public have had retailed to them *the vinegar of the four thieves*.

A plaintiff has now his choice of proceeding in the Common Pleas; he may have three writs out; his attorney will forge the sheriff's return for Middlesex, where the defendant does not live, and then the *testatum capias* is directed to the sheriff of Berkshire, where the defendant does live; who takes his body directly, notwithstanding the lie on the face of it, that the defendant *lurks, wanders, and runs about in your county*: here is a sample of English justice, three forgeries and a lie to take a man's person for a *trespass* he never committed! The parliament of France are terribly alarmed at the continuance of their king's power of issuing
lettres

lettres de cachet, but I think the people of England have letters to *catch him*, with as much vengeance as the French monarch. Mr. Howard tells us that they have cages suspended in the Bastile; but I think our courts can produce equally as strong cages, with a great many more birds in them: in one country the *sword* acts the tyrant; in the other *law*. But now let us consider the operation and consequences of Arrest for Debt.

I have before observed, that a plaintiff may have four writs out of the Common Pleas before the defendant is in custody; in the King's Bench it is common to have but two, first the bill of Middlesex, and then a *latitat*, which runs in the same manner as the *testatum capias*, telling the sheriff of Berkshire that the sheriff of Middlesex cannot find the defendant, and that he *lurks* and *runs about* in his county. I think it must appear very obvious to every reasonable man, that if the courts had a power to arrest for debt, they would not use *disgraceful fiction*; they would say, by virtue of such authority we command you that you bring the person of the defendant before us, to answer the plaintiff on his plea of debt. But this they know would not
answer

answer their purpose; for in the first instance, they would only get the profit upon one writ; in the next place, if the officer obeyed the writ and brought the defendant, and both parties were present, the *truth* of the matter would come out, which would lead to *speedy justice*, a circumstance that would make the *trade* of law not worth following; it is *the glorious uncertainty of the law* that brings the grift, and it is the emoluments arising from this uncertainty that corrupts [all lawyers' principles. No man could act more upright than that great oracle of the law Sir Edward Coke, whilst his interest and his duty as a judge went hand in hand; he speaks in raptures of the excellence of our constitution, he violently opposed the court of King's Bench taking cognizance of debt, and lays down such reasons why the body of the debtor should be free, that his arguments strike conviction on the mind, when he tells us, it was the established principle of the common law of the land, that "*the body of the debtor shall always be free, that he may serve the king in his wars, cultivate the ground, and maintain his family.*" He thinks the reasons are just and noble, he admires the whole

whole constitution of law as the grandest structure ever reared by human hands. Yet mark his own conduct when his situation altered; from the opposition he made to some proceedings not only of the King's Bench, but also with the courts of Chancery, for interfering with the proceedings of the court of Common Pleas, he got himself turned out of the chief justiceship; and it was not without a great deal of humble submission that he got the chief justiceship of the King's Bench; but it being a court established more for justice than plunder, the poor judge could not support his consequence as he used to do in the Common Pleas, which had the sole sovereign jurisdiction in matters of debt: *money*, that great prevailing principle of acting, was to be obtained. But how? not by law: for this upright judge had already laid it down as common law, that no officer under the king could take any thing for doing his office, saving of the king only; and on this just principle, "*that justice should not be bought.*" *Fiction* therefore was the only resort; the love of money began to prevail over honesty; to get it, men would leap over the bounds of religion and law: to make swearing easy, to reconcile the

the

the minds of greedy men to falsehood, was all that was necessary ; and therefore to make his *cold ball* as comfortable as his former *warm kitchen*, with as little ceremony as a modern patriot will coalesce with a traitor, he issued those very writs of trespass he had before cried down as unconstitutional and oppressive. The judges, since the time of this great oracle of the law, have not presumed to go out of the line of office ; one of our present pillars of the law, who looks on honesty a farce, and that law the best a man can get the most money by, was hurt at the thundering exclamations of a well-known then commoner at a county assize ; and after his patience was exhausted, he replied, " Sir James, you seem a warm patriot, and think the minister a very bad man ; will you give me leave to relate a short story ? " The baronet replied, his lordship will do him a favor. On which our judge began thus : " There was a miller in the country that used to take rather more grist than the country people thought he had a right to, and loud complaints were made ; but one man, more particularly than the rest, insisted on his being turned out of the mill ; the country people

people agreed to it, and after having turned out the miller, they thought they could not do better than put this man in his place: when lo! in process of time, the country people complained against this man also, saying, He takes as much grift as the other. And calling this new miller before them, they asked him, How it was that he who had so abused the late miller, should be guilty of the same offence? He replied, That he had maturely considered the matter, and was convinced the fault did not lie with the *miller*, but in the *mill*." Thus our learned judge apologized for an iniquitous minister of state, and silenced the vociferation of a bawling patriot. It is to this *mill*, the permitting money to be paid for justice, this country owes its present wretched situation. Parliament alone can call our courts of law to account; but alas! they are privileged from their destructive proceedings, hence arises their lukewarmness, and the influence of the law department in the House of Lords is astonishingly great; and whilst the *mill* is suffered to yield so much grift, whether Sir Edward Coke, or any other is the *miller*, he cannot keep his hands clean. A member of the House of Commons who

wrote

wrote to me last sessions of parliament for information on this subject, says in his letter, "*You may be assured no lawyers will consent to the abolition of a practice which forms so main a part of their profits.*" In answer to which I say, *I do not ask their consent.* I know no authority but what is founded on the law; and though the law gives a determined man a remedy, yet it is necessary that the people should be convinced the practice of Arrest for Debt is a national evil; then to satisfy the minds of all parties, let an act pass, which shall declare the practice to have been always contrary to law, and regulate all future proceedings for recovery of debt.—All opposition to the good of my country I treat with contempt.

Now let us consider the operation of this writ of *trespafs*, and *on the case*. It appears extraordinary even to sheriff's officers; commanding the sheriff to have the body of the defendant before the king himself, wheresoever he shall then be in England; it is general in its expression, not regarding one person more than another, or what county the king may be in; so that was it obeyed literally, a defendant living in Suffex is to be carried before the king

king in Yorkshire, supposing him then there; this method of doing justice is so contrary to law, that it confutes its authority, for the sheriff of one county never had power to follow the king into another county on his office: but we will grant that the court of King's Bench having been long established at Westminster, the sheriff knew where to take the defendant; in this case, the sheriff obeys the writ by taking the defendant to prison instead of the court of the lord the king. When the sheriff's officer has the writ, it seems he gets a warrant, with one corner tucked up with a wafer, telling the officer to take the body of the defendant, without any reserve in the body of it, but lest the officer should catch a peer or member of the House of Commons, &c. there is a note at the bottom, telling the officer to take care before he arrests the defendant, *that he is no ways privileged or protected*: this warrant cannot be law, because no subject can be privileged or protected against the law, the king alone is supposed incapable of doing wrong, on account of his acting always by the advice of his privy council: — that justice may be administered in mercy, the king has a power

to soften the law after condemnation, but it is not his prerogative to stop the law between subject and subject: an offence bailable is bailable alike, according to the nature of the offence, to all persons in the kingdom. Any matter that does not amount to an offence is not bailable; and lest an injury should be done, the *habeas corpus ad subjiciendum* declares, *it discharges all but criminals*. It certainly must strike conviction on the mind of every person of the injustice, that the greatest men in the nation are exempted from the operation of a law, which they hold to be a public evil; because, though they have more means of doing themselves justice if injured, they nevertheless humbly crave his majesty to protect their personal liberty; but at the same time will not allow he has a right to make law, yet in this instance give him authority to stop the law; and see *burthens laid on the shoulders of the people, which they will not touch with their little FINGER*.

It is necessary to look back to the time when the House of Commons was exempted from Arrest for Debt. In the reign of Queen Elizabeth, Sir Thomas Gargrave, speaker of the House of Commons,

mons, in an humble address to the Queen, petitioned that the members of the house and their servants should be privileged from Arrest for Debt, which was readily granted. And as for the House of Lords, they never would submit to any law against their personal liberty, *but the law of the land*. The House of Commons now enjoying this blessing of liberty, left the fate of others to the mercy of the courts below, who did not fail to continue a beneficial practice to themselves; but the cause wavered, for Bacon Lord Verulam to the queen, being asked his opinion of the legality of Imprisonment for Debt, he gave his clear opinion, that "*no person could be arrested for debt in England, according to the constitution.*" And Sir Edward Coke relates a decision given in the court of Exchequer, which was a confirmation of Bacon's opinion; and was this:

"Two debtors were in Norwich gaol, charged in execution; they broke out and made their escape; the plaintiff brought his action of escape against Clement Paxton, sheriff of Norfolk. The sheriff's counsel set up a defence, *That as imprisonment for debt was contrary to law, the sheriff*

should not be liable to any damages : the court awarded, *that the capias ad satisfaciendum was erroneous, for by the law the body of the debtor could not be held.* Sir Roger Manwood, and the other barons of the Exchequer, who gave this decision, could not have been ignorant of the law in this respect ; and as the statutes which seemed to sanction the practice were known to them to be against the principles of common law, they did not hesitate to do their duty as judges of a court of law and equity."

Queen Elizabeth regarded the power of confining debtors in so contemptible a light, that with her own authority, without any sanction from Parliament, she appointed commissioners with full power to inspect the different prisons in the kingdom, and release whoever they thought deserving. But it is to be lamented, that Lord Chancellor Bacon, who was at that time so much respected, should fall into that error, so common to lawyers, of being guilty of bribery ; of which he was convicted by the Parliament, and had the broad seal taken from him, and suffered to linger out the remainder of his days in an obscure lodging in Gray's-inn Lane ; otherwise this great lawyer might with
ease

case have got a bill passed in Parliament to inflict severe penalties on any courts of law who should after that attempt to rob mankind. But that the Parliament should meanly accept of a privilege from a public evil, is an everlasting disgrace to them as Englishmen; and since that time, whilst their country has been groaning in misery, they have been almost unconcerned spectators; yet when their own privilege has been attacked, mark how anxious they have been to have redress;—the two following circumstances will suffice at present.

In the first year of the reign of king James, Sir Thomas Shirley, a member of the House of Commons, was arrested four days before the sitting of Parliament, and carried prisoner to the Fleet; on which a warrant was issued to the clerk of the crown for a *habeas corpus*, to bring him to the house; and the officer was sent for in custody; who being brought to the bar, and confessing his fault, was excused for that time; but Simpson, the plaintiff who caused the arrest to be made, was sent prisoner to the Tower, as was also the warden of the Fleet, for not obeying the *habeas corpus* in time.

In the nineteenth year of the reign of James I, one Johnson, a servant of Sir James Whitlock, a member of the House of Commons, was arrested by two bailiffs, who being told Sir James Whitlock was a parliament man,—answered, that they had known greater men's servants than his taken from their masters in time of parliament. And this appearing true to the house, the two bailiffs were sentenced to ask pardon of the house and Sir James Whitlock, on their knees, that they should both ride on one horse, bare-backed, back to back, from Westminster to the Exchange, with papers on their breasts, signifying their offence. Which sentence was put into immediate execution.

Here let us mark how tenacious the members were when the valuable blessing of personal liberty was attacked in the persons of their footmen; yet how indifferent in the persons of their own relations: we see at this day the brothers and sons of peers, the fathers, mothers, brothers and sisters of members of the Lower House, pining with want in prisons; and to the eternal disgrace of this country, a crowned head, Theodore king of Corsica was suffered to languish in the King's Bench prison for
a trifling

a trifling debt, and afterwards to be buried by the parish; the more shame that he was a foreign prince;—whilst two bailiffs go through a disgraceful punishment for obeying a writ of the court of King's Bench, in taking the body of a member of parliament's footman. I must observe, that besides both Houses of Parliament, all attornies on the roll claim the privilege of being exempted from Arrest for Debt, and they must be indulged in it, because *they know too much*: the verge of the court is likewise protected, which must appear curious to an officer bearing a warrant, commanding him to take the body of the defendant before the lord the king himself at Westminster, when at the same time he sees the defendant so near the king's residence, and dare not speak to him on his office.

What then is this three-cornered warrant? Is it a command, or is it not? if it is a command lawful in the king's name for justice, why is it not obeyed? a lawful warrant commands the assistance of the whole country: a real officer takes to his assistance the *posse comitatus*; if that is not sufficient, a regiment of guards, or all the force in the kingdom. Law is absolute! it is higher than the king

himself. In France, a man is sent to the Bastile for life, *par ordre le roi*; in England, a man can only be committed to prison *until delivered according to the due course of law*; a prison in England is not to be a punishment from the country, but only a place of security for felons before trial: the force therefore of this pretended warrant is very cautiously managed; the bailiff must take care he does not snatch the body of a prince of the blood royal; he must take care he does not go too near to a gambling judge; he must pay respect to lazy bishops; if he is at Newmarket, he must nicely distinguish between the peer and jockey; if he is at a gambling table, he must mark the difference between a parliament man and a pick-pocket: and as for an ambassador, or his footman, if he presumes to intrude on his office, he will be severely punished; and in return for the affront, a black emperor may order his headsman to take off a hundred English heads, with the British consul's for an example.

But now for what a bailiff may do with this printed paper. If a commander of his majesty's fleet is on board, going to save his country from destruction,

destruction, he may take a silver oar with him, and take him to a gaol, although the capture of the grand fleet of England should be the consequence: if a general officer is upon the most important expedition for his country's welfare, he may prevent him: if a clergyman is going to instil the love of Christ to his flock on a week day, he may spoil his sermon, and suffer men who would be christians to remain brutes: if a manufacturer or merchant, who gives bread to thousands, has his name in the bailiff's pocket, he must stop his business, and ruin a town in one day: if a tradesman who is loud against the minister for laying on taxes, gets into the hands of a bailiff, all his oratory for the love of his country is silenced in the Fleet-prison: if any of his majesty's loving subjects, whose personal labour is essential to the support of government and the maintenance of their families, have been ruined by a destructive war, they may either shoot themselves, or go to prison.

But now in what manner does this warrant come? It runs in the name of the lord the king, and is to be returned on the morrow of the Holy Trinity; yet the bailiff does not come to your house

house like an officer, he lurks, and peeps, and gets in at your window, or down your chimney, like a thief; and when he has you, he acts the pick-pocket, extortion being the chief part of his business; he then shews himself a liar, for instead of taking you before the court of the lord the king, he conducts you to prison. A countryman who was arrested by a bill of Middlesex, desired the bailiff to read it to him, which when he had done, he cried out, " Lord ! lord ! what have I done to be carried before the king ? " His wife answered, " Thomas, do not be afraid, I will go with you to the king; and when he knows you always paid your way till we had seven children, and the lawyer took the paddock away, or else vile a bill in chancery, I dare say he will send you back to your farm again." The bailiff persuaded them to go with him; but when they got to a lock-up house, the countryman understood, instead of going before the lord the king, he must go to Newgate; to prevent which, the farm was sold to the lawyer, and the countryman obliged to turn waggoner.

Of the fatal and bloody effects of this tucked-up

up warrant, we are now to consider in the first instances. —Two brothers, farmers in Bedfordshire, were both arrested with one writ; with some difficulty the bailiffs persuaded them to go to a public house, where they said they would contrive some method of settling the matter. When they arrived there, the bailiffs consented to let one brother go for two hours, to see if he could borrow the money; but in case he did not return in two hours, the other brother should be taken to prison: the two hours elapsed, and no brother appeared. The bailiffs then began to insist on the other brother going to prison; when he, having before determined to the contrary, took a loaded pistol out of his pocket, and blew out his brains. While all was in confusion on account of this fatal catastrophe, the brother returned with the money to pay debt and costs;—the feelings—the sensibility—the tenderness of this young farmer for the loss of his brother was beyond description!—he had not received a London education, that teaches to despise a brother in distress, his worthy heart led to honest love. A fit that lasted him a long while, had near joined him to his brother

ther

ther in heaven; but as it was the will of God he should recover, he reconciled his mind to life as well as he was able, to live in a land of liberty, where even murder is sanctioned for the sake of plunder.

The following circumstance of the death of Major Scott is taken from the public papers.

Morning Chronicle, August 30, 1786.

“ The fate of Major Scott, the late Deputy-Governor of St. Helena, is sincerely regretted. “ The circumstances of his death are as follows :— “ Having obtained leave from the company to “ come home for the recovery of his health, he “ arrived about three weeks ago, in the General “ Coote Indiaman; he lodged some time at the “ Plough, at Clapham, for the sake of the air, “ and removed from thence on account of his extreme illness to the Carleton Hotel, in Pall-Mall, in which place he was taken in arrest for “ a disputed claim for 2,800*l*. His surgeons, Mr. “ Wood and Mr. Bailey, represented to the sheriff’s officers, that he could not be removed “ but at the utmost hazard of his life; but they “ were

“ were inexorable : the largeness of the debt, they
“ said, made it unsafe further to admit of a mo-
“ ment’s delay. The landlord of the Hotel proposed
“ to them to guard their prisoner where he was, and
“ that for their security they might bring any
“ number of people they pleased into the rooms.
“ All this was insufficient to remove them from their
“ purpose ; they called a coach, and in dragging
“ him from his bed, after struggling for some time
“ in the agonies of death, his strength failed him,
“ and he died in their arms. We have the sa-
“ tisfaction to add, that some gentlemen of the
“ House of Commons, of military rank, who
“ were present, shocked with the calamity spring-
“ ing from this instance of the severity of our
“ laws, declared their determination to move the
“ House in the ensuing session for the revival of
“ a system so disgraceful to our constitution, and
“ so inimical to every feeling of humanity.”

I will only remark on this act of barbarity un-
der pretence of law, that as the members of the
House of Commons then present may have short
memories, it might not be amiss, as there is a print

of

of the fatal circumstance, if all the members of the House had it hung up in their bed-rooms.

The Morning Chronicle gives another instance of this butchering warrant. "Mr. C— of New-market was arrested for 200l. and carried to a lock-up house in Wood-street, from whence he made his escape; but was taken again, and brought back to the same horrid place, where, in a fit of desperation, he cut his throat in so terrible a manner, that he instantly expired." *What a pity this gentleman was not a member of parliament.*

A public writer, in his letters to the king, has the following passage: "Sir, permit me to draw your majesty's attention to a scene, which heaven and earth beheld with horror; a respectable merchant, who had lived forty years in one house with credit, and brought up a numerous family, became, from national misfortunes, insolvent; and though he honestly gave up his effects to his creditors, yet by one of those acts of iniquity permitted by the bankrupt laws, was by one avaricious creditor thrown into the King's Bench prison. In one month after, he
" lay

“ lay upon his death-bed, furrounded by his ami-
“ able wife and lovely daughters, drowned in tears;
“ when the good man exclaimed against the law
“ that had murdered him; looked on his miser-
“ able family with heart-rending anguish, appeal-
“ ed to heaven’s high tribunal, and breathed his
“ soul to God. The Almighty presented to my
“ eyes the awful sight! struck the spark of con-
“ viction on my mind, and bid me call aloud for
“ justice. But your majesty’s anger will arise
“ when I inform you, that even after this the gaoler
“ would not suffer the body to go out, without
“ paying a guinea for the coroner’s warrant, and
“ twelve shillings for the jury. The widow stood
“ aghast at the demand, which flew round the pri-
“ son, and filled every breast with indignation.
“ A prisoner lent the money; and, when the fees
“ were paid, the widow was suffered to bury the
“ much-lov’d corpse of her departed happi-
“ nefs. But as her support is gone to hea-
“ ven, who is now to maintain this family? Sir,
“ this is only one instance; were all the dead bo-
“ dies of your majesty’s subjects, murdered by Im-
“ prisonment for Debt, to be assembled in West-
“ minster-

"mister-hall, there would not be room left for
 "the tyrants of the law to behold their handy-
 "work!"

The following Elegy deserves a place in this publication.

THE GHOST, AN ELEGY.

*Wrote on a Gentleman who died with Grief and Dis-
 appointment in the King's Bench prison, when the
 Insolvent Bill was lost, August 1784.*

'TWAS on that sad and solemn night,
 When *Hope* reluctant fled,
 And many a hapless prisoner lay
 Desponding on his bed.

An awful silence reign'd around;
 When, from his lonely tomb,
 A pale-ey'd ghost was seen to glide
 Along the deep'ning gloom:

And thrice around these dreary walls
 A sorrowing look he cast;
 And thrice he cried, "The fatal day,
 "The fatal hour is past!"

"Ah,

" Ah, hapless Britain! wretched land!
From thy ill-fated shore,
Lo, mild Humanity is fled,
And Mercy rules no more.

Each soothing power of social joy
No more shall sweetly smile;
Nor *Hope* with her enchanting train
Misfortune's frown beguile.

And O fair Freedom, once our boast,
Once guardian of our land!
Say, wilt thou crouch a vassal vile
Beneath *Oppression's* hand?

No! from degen'rate Britain far,
Beyond th' Atlantic main,
Thou bidst the sun of glory rise,
To bless each happy plain.

Whilst venal power and tyrant laws
O'er Britons bear the sway;
Who tamely bend beneath the yoke,
And slavishly obey.

With empty forms and shadows pleas'd,
The substance they forego,
And from delusion's honied cup
Drink pois'nous draughts of woe.

H

" See

" See Power despotic," oft you cry,
" O'er France exulting reign!
" See a proud tyrant lawless rule
" The wretched realms of Spain!"

But for a moment turn your view
To prospects of your own;
Beneath a worse despotic sway,
Surrounding millions groan.

Each guilty wretch of gold possess'd,
Becomes a tyrant here;
Whilst titled miscreants—regal pride—
Disdain soft Pity's tear.

Your wounded bosoms deeply feel
The keen inflicted smart;
Your tender offsprings' plaintive cries
Too deeply pierce the heart.

Full many a secret sad preface
Oft told my anguish'd mind,
Ere the cold hand of death my frame
To kindred clay consign'd;

Oft told me 'midst these direful cells,
These seats of grief and pain,
That all our trust in earthy aid
Was fugitive and vain.

Blest

Blest God of mercy! let my soul
 To thee its tribute pay,
 Who summon'd, ere this fatal hour,
 My soul from earth away.

But short thy triumph, cruel man,
 Who plann'd my miseries here;
 How wilt thou at the judgment day
 Before thy God appear?

Ev'n whilst on earth thy tortur'd soul
 No peace no joy can know,
 Though all the wealth that India boasts
 Into thy coffers flow.

But ah, adieu! a long adieu!
 Sad children of despair,
 "The bell strikes one!" The spectre sigh'd,
 And vanish'd into air.

Having given sufficient cases of murder to make the mind of every feeling man recoil with horror and indignation at the effects of this inhuman pretended warrant, it is necessary to take notice of cases of oppression and injustice of longer duration.

Governor Morris of St. Vincent's, in his late publication, says in a letter to the lords of the trea-

fury, " If I draw on your lordships, and my bills
" are returned protested, I shall be irretrievably
" ruined, if your lordships' protest of my bills have
" not already done this ; and I must lie in a gaol
" for having served his majesty, with a zeal I can
" affirm cannot be exceeded, and this without any
" English or Colony salary.

" Alas ! how fatally was this prophecy fulfilled !
" the writer having gone far in a fifth year's cruel
" confinement, from the delays of government in
" settling his accounts, at last, in order to render
" his small remains of life still less completely
" miserable, and to rescue, by wholesome air and
" exercise, even that from increasing pain and
" sickness, he was forced to purchase these at the
" expence of his poor remains of fortune or inde-
" pendency ; still at the mercy of others, to re-
" place him where he so long lay, until he can
" get settled those accounts, and receive those just
" payments, he has so long in vain solicited to
" have."

The conduct of public offices in refusing to pass
the accounts of officers under the crown, deserves
the reprobation of every well-wisher to his coun-
try.

try. From the fault of government in not passing general Morris's accounts, and in not accepting his bills to enable him to fortify the island in the manner it ought to have been, he was obliged to surrender the island to the French forces; and when he came home, was arrested and lay in the King's Bench prison near five years, although he contracted the debts for government service, and had a considerable balance coming to himself.

A gentleman of equal rank with Mr. Morris, solicited government for seven years, before he could get his accounts passed; at last, by means of a lady who had interest with the minister, he got the greatest part of his demand; this is the English government's way of paying debts. The best advice I can give to his majesty's governors, respecting the liberty of their persons, is to petition the emperor of Morocco to let their names be inserted in the list of his ambassador's servants at the court of England, when they might be assured that government would not suffer the courts to issue their writs of *trespasses* against them, whilst there was an English head in his Moorish majesty's dominions.

Of the lives of his majesty's subjects, crushed out by secret barbarous ways, of the various insults, oppressions, and extortions, of those who stay long in prison, we must take notice as we go on with the process of this diabolical system of Imprisonment for Debt. But first, there is a hardship the bailiffs complain of, which they desire me to point out. The warrant says, take the body of John Thompson, Charles Long, or William Simpson, but does not mention his calling or occupation; and not knowing the persons of the members of parliament, except such as have been in their hands before they had a feat, they cannot avoid sometimes making a mistake; therefore they humbly beg of me to propose a remedy. I have considered of their request, and think it might not be amiss if both Houses of Parliament were to walk in slow procession, once a year at least, from Westminster-hall to Whitechapel church, that the gentlemen of the bum might be able to identify their persons.

Let us now take under consideration the operation of the writ of *trespass*. The first gulp being swallowed of the arrest, the next step, to a man that

that can do it, is to give bail. Now mark the condition of the bail bond, which is this, "That the above bounden Charles Long, do appear before the justices of our sovereign lord the king, at Westminster, on the morrow of the Holy Trinity, to answer William Burton of a plea of debt of two hundred pounds." So far I must observe, a summons would have answered the purpose, without the expence of a guinea for a bail bond; but the recognizance on justification of bail, which ought to be a security for the money being paid to the plaintiff, in case the defendant is condemned in the action, only says,

"You Charles Long, do acknowledge to owe unto the plaintiff four hundred pounds; and you Peter Hammond, and Edward Tomlinson, do severally owe unto the same person the sum of two hundred pounds a-piece, to be levied upon your several goods and chattels, lands and tenements; upon condition, that if the defendant be condemned in this action, he shall pay the condemnation, or render himself a prisoner in the Fleet for the same; and if he fail so to do, you

H 4

"Peter

“ Peter Hammond and Edward Tomlinson, do undertake to do it for him.”

The paying the plaintiff is not the business of the foregoing recognizance; the defendant is to render himself a prisoner to the Fleet, or else the bail is to render him; but whether the plaintiff is ever to be paid or not, the court does not concern itself about; and as in the first instance of arrest the law has been broke through, so in the next they follow up their rigour, and take the part of the bail, by permitting them the liberty of rendering the defendant whenever they think proper: in doing which, they carry their proceedings to such a length, that no day or place they hold sacred; so that whatever difficulty the defendant may have had to procure bail, he is again in fear of being sent to prison by his bail, even before the cause is tried:—and it certainly was very wrong in a particular *bail-mongering attorney*, to take twenty pounds of a foreigner to procure bail for him; and then make the bail, almost directly after, take him out of his bed and send him to Newgate. But now we proceed to the action of William Burton, against Charles

Charles Long, in which the *defence, plea, general error, error afresh, &c.* is all *fiction*, tending only to prolong the time of payment on the part of the defendant; and obliging the plaintiff to answer the defendant to matters which do not concern the action, or else have his property taken for default. A certain attorney was lately boasting that he had already put a plaintiff, who was against his client, to seventy pounds expence; and that as he should move the cause into chancery, he doubted not making it three hundred pounds expence to him.—It seems it was a just debt of fifteen pounds. I think every reasonable person will allow, that the court of Common Pleas, wherein we will suppose an action of debt shall originate, is quite sufficient to determine the cause: the moving therefore of actions of debt from one court to another, is an evil calculated only to promote litigation for the sake of gain to the courts. A debtor in the King's Bench prison was advised by his attorney to move himself by a habeas corpus, on a friendly action, to the Fleet prison; which being done, it seems the plaintiff could not charge him in execution, without the expence of a habeas to take him out of the Fleet and bring

bring him before the court, which his attorney would charge him twelve guineas for; and in this case, the plaintiff being a poor man, and not being able to pay, the suit was *nonprossed*; the defendant got out of the Fleet, and the plaintiff was sent to prison for the defendant's costs.—Thus the shops of justice promote each others trade.

I must now take notice of the habeas corpus act, settled in the reign of Charles II. but was known long before, only on account of the difficulty of procuring it, it was found necessary to inflict penalties on any officer refusing it: it is therefore 500l. penalty for default in a judge; and for an officer, 100l. for the first offence, and severe penalties, for the second, as a court shall order. The meaning and intent of the habeas corpus act is, that no person shall be illegally confined; for before the passing this act, wicked judges, or ignorant magistrates, imprisoned men at their pleasure; and the infamous court of Star Chamber, in the reign of Charles I. broke through the laws of the land; and executed, fined, and imprisoned men at the command of the court: the habeas corpus was denied by the judges, and the nation had no other remedy from the most tyrannical proceedings, but to arm themselves,

themselves against an unconstitutional standing army. When Charles II. ascended the throne, the constitution was put upon a better footing than it had been for a long time ; but was far from being restored to its original purity. The habeas corpus act, however, was deemed a great security to personal liberty ; for it will remove a man before a judge or court of justice, although committed by the king in council : the *habeas ab subjiciendum* says, it discharges all but criminals ; yet a debtor in confinement went with this *habeas* before a judge, and demanded his liberty, or be proved a criminal : the judge pleaded ignorance of the law in this respect, and recommended him to have it returnable before the court of King's Bench. The court smiled at the man's coming there for justice, and ordered him to prison, without giving him an answer. It is true, the debtor had a little spirit, and with some others broke out of the King's Bench prison ; but an act of insolvency coming immediately after, the spirit of liberty that then began to rouse itself, soon subsided. Our ancestors used to make complete work of what they took in hand ; but now, it seems, a man will patiently see his near neighbour ruined, till

till it comes to his own turn to suffer. But now let us consider the use and intent of this valuable security to the personal liberty of the subject; it is to give a remedy to any person illegally confined; no matter how, or in what manner. But now mark the abuse of it; as it is given for a remedy where a man is in confinement, it ought to be given without any expence; *for justice in England ought not to be bought*; instead of which, the lowest price they will sell you a habeas, is four guineas: and that debtors' may be frightened to become customers, they have contrived to put chains over the debtors door of Newgate, that passengers may be terrified at the horrid prospect; the consequence of which is this, that however a man may have been distressed, by taking him from his business to a lock-up house; he will at all events, if he possibly can, raise the money to buy a habeas. But it is a great fault in *habeas mongers* to tell a poor man, if he will raise two guineas, he shall have a *habeas* to move him to the Bench; when they know, at the same time, there is no going through the turnpike without paying toll. A poor man had a habeas lodged for him, and when
he

he went to judge's chambers, had not money to pay conduct for the sheriff's officer, judge's fee, or tipstaff conduct-money. The poor man's wife was simple enough to suppose, because she had twelve children, the judge would pass the habeas, and give her credit: the judge's clerk smiled at her simplicity, and told her if the king himself came there with a habeas, without the fee, he would be sent to Newgate. The poor wife, who thought if her husband was sent to Newgate, he would be hanged — pawned her cloak, gown, and upper-petticoat to raise the money, that an upright judge might not condemn an honest man, because he could not pay fees.

We must now take a little notice of the manner in which business is conducted at this turnpike of justice, which our witty judges call their *pill-shops*. It is usual for all attornies, who are polite, to write a commitment warrant on the back of the habeas, and fold it in such a manner, that there shall be no occasion for a judge to trouble himself to open it; for formerly, when justice was administered without fee or reward, it was usual, according to the law of the land, for a judge to read the habeas himself;

self; and if there was not law for his commitment, would discharge him, or else write the commitment himself; but now it seems a matter of too much trouble; therefore before the judge's journeyman takes it in to his master, he sees that the business is straight forwards; and habeas-mongers have often a severe reproof when negligent:— however, admitting all is right, the parties wait two or three hours, until there is a sufficient number; then the great man sits down, with the door half open (it is a mark of great rudeness to look in): but once a countryman stretched his neck out, expecting to see the Holy Bible on the table before the judge; instead of which, he only beheld the bottle and glass: and when this administer of law and justice was at leisure, and saw as many habeas's ready as he thought proper, he signed the commitments in as expeditious a manner as a king of England would twenty death warrants; and with as much unconcern as a duke of three kingdoms would see his country on the brink of destruction!

Humanity having before induced me to give a gentle hint to the habeas mongers, to have more pity for poor people, than to take their money, and
tell

tell them they will get them through the business of a habeas, and afterwards expose them at judge's chambers. I must now be impartial with respect to the judges themselves. A judge waiting at chambers, expecting to sign twenty commitments, and have the fees of them all; and at last, after waiting two hours, having only the profit on ten, must certainly be a great disappointment; and as this inconvenience arises from the deception of habeas mongers, I have indulged the courts so far, as to insert the following advertisements.

COURT OF COMMON PLEAS.

Old Shop,] Whereas many persons (who have
to wit,] not been there before) may imagine
 that because a writ issuing out of this court shall
 entitle the defendant to a place in the Fleet pri-
 son (being the prison belonging to this court), or
 that the expence of a habeas is only two guineas,
 this is to give notice, that the *habeas corpus act* be-
 ing converted to answer the purpose of emolument,
 a regular system is established between the court
 of our sovereign lord the king, the attorney or
 monger

monger who applies for the habeas, the sheriff's officer, and our trusty tipstiffs; and in order that no mistake may arise, to the hindrance of time of the justices of the court of our said lord the king, as well to avoid disappointment to poor defendants, the prices to be paid for the habeas are as follows, that is to say; for an habeas on an action issuing out of this court, — — — £. 4 4 0

For a habeas on a friendly action, to

remove from the King's Bench — 5 5 0

By the Court.

COURT OF KING'S BENCH.

True Shop, } Whereas many persons (who have
to wit. } not been there before) may imagine
 that because a writ issuing out of this court, shall
 entitle them to a place in the King's Bench prison
 (being the prison belonging to this court) or
 that the price of a habeas is only two guineas, this
 is to give notice, that the *babeas corpus act* being
 converted to answer the purpose of emolument, a
 regular system is established between the court of
 the lord the king, the attorney or monger who ap-
 plies

plies for the habeas, the sheriff's officer, and our trusty tipstiffs; and in order that no mistake may arise to the hindrance of time of the judges of the court of the said lord the king, as well to avoid disappointment to poor defendants, the prices to be paid for the habeas are as follow; that is to say, for an habeas on an action issuing out of this court, ——— £. 4 4 0

For a habeas on a friendly action, to

remove from the King's Bench - - 5 5 0

By the Court.

COURT OF EXCHEQUER.

Cheap Shop, } Whereas many persons (who have
to wit. } not been there before) may imagine
 that a writ of *quo minus*, issuing out of this court, shall entitle them to a place in the Fleet-prison, (being the prison belonging to this court) or that the price of a habeas is only two guineas. This is to give notice, that the *habeas corpus act*, being converted to answer the purpose of emolument, a regular system is established between the barons of the court of the lord the king, the attorney or monger who applies for the habeas, the sheriff's officer, and our trusty tipstiffs; and in order that

no mistake may arise to the hindrance of time of the barons of the court of the said lord the king, as well to avoid disappointment to poor defendants the prices to be paid for a habeas are as follow; that is to say, (in consideration of the extraordinary expence of a *quo minus*)

For a habeas on a writ issuing out of

this court, — — — £. 3 13 6

For a habeas on a friendly action, to

remove from the King's Bench - - 4 14 6

By the Court.

I must now take under consideration the case of the poor knight marshal. He is afraid that the foregoing advertisements will spoil his trade; and as every possible pains have been taken, to make his cage in the Borough as convenient as the stench of the place will admit of; and being a martial officer, and more used to threaten than entice, insists upon my inserting the following advertisement,

COURT OF MARSHALSEA.

Towards Residence, } Whereas certain advertise-
to wit. } ments have appeared, purport-
 ing the prices to be paid in future on the *habeas*
corpus act, by which many persons may be led to
 hide

hide themselves in the King's Bench and Fleet-prisons, contrary to the law of the land, which declares "*the body of the debtor shall always be free, that he may serve the king in his wars;*" and whereas the knight marshal, the steward of the household, or his deputy, have, since the reign of Charles I. by letters patent, had cognizance of all manner of civil actions (military actions being out of use) within twelve miles of the king's royal palace of Whitehall, and thereby derived great emoluments; but now, by means of three shops of justice advertising, the said knight marshal, steward of the household, or his deputy, may be likely to lose their emoluments. This, therefore, is to give notice, that the blood-hounds of the court will be constantly on the scent; and that endeavours will be made to extend the jurisdiction of the Borough clink all over England, that all cowards may be put in that stinking hole; unless the three shops of justice will agree, that the court of Marshalsea shall divide equally with them the emoluments of the *habeas corpus act*.

Signed, by Order of the Court,

FIREBALL.

I 2

Thus

Thus far the business of the habeas corpus act, in which the sensible reader will consider how far the knight marshal's arguments have weight. We must now suppose debtors as having paid the toll at the turnpike of justice, and bundled by the tip-staffs into hackney coaches to their respective prisons. The first salutation of the marshal of the King's Bench, or warden of the Fleet is, the inside-fee; which they say, is for the prisoner's advantage to pay, otherwise he cannot be entitled to a corner of a room. The consequence of his not paying is, that with a fork he may pick out the softest bench in the tap-room to sleep on. Those who are only half ruined, or have defrauded their creditors, may hire room, bed, and bedding, at as low a price as a lodging in the Circus at Bath.

We will now take notice of the effects of this national evil, according to the different dispositions in prison—some drink, some game, some swear, some play, some write, some turn lawyers, some pray to God, and some reproach him. The wives of these men are some virtuous and some not; the children of these men are rude, ragged, and dirty; the distress of mind in prisons, to
these

those who have fine feelings, is beyond description. One man in the King's Bench prison, whose wife turned out a prostitute, went mad: the marshal, out of tenderness, put him in the strong room; but finding him troublesome, sent him to Bedlam, where he died raving. Another, who had a wife and three children, for whom he could not procure another meal, cut his three children's throats first, then his wife's, and then his own. Many languish out their existence, without the pity of mankind; and yet this is called a land of liberty, which makes a parade of obeying the word of God, and the gospel of Christ. God says, "*ye shall not oppress one another;*" and Christ says, "*love one another as I have loved you.*" But Christians oppress one another, contrary to the law of God and their own laws; and relations will see their own kindred perish for want, without giving them any assistance. A prison, which in England was never intended for any other purpose but to confine criminals before trial, whose offences were not bailable, is now made a residence for the prime part of a man's life; the consequence is, that he imbibes principles which are detrimental to the interests of

the community at large; and which spread as he comes out into the world: the great flux and reflux of men continually going in and out of prisons, is like a stinking water, that poisons the wholesome rivers of the kingdom.

A very important concern to the public, is the great number of insolvent persons on the hide and seek for fear of arrest; as likewise the fugitives in foreign countries;—at home, not only the verge of the court, but the city and liberties of Westminster, are filled with distressed gentlemen, officers, tradesmen, and others, who are afraid to appear in their proper place of residence; and not being able to follow the occupation they severally have been used to, are a most grievous burthen to lodging-houses, and tradesmen of every description; every distressed character sets up for a gentleman, and ingenuity is put to the rack of invention to raise money,—bills, notes of hand, cards, dice, horse-racing, every mode of deception, and even the highway is resorted to by these unhappy men, to keep up the appearance of gentlemen, and procure subsistence: thus the order of nature is perverted, and the property of individuals is taken from them
by

by artful means, which no law can alter until every man is restored to his proper situation. Of the evil effects flowing from our fugitives abroad, we had a sufficient sample last war; not only the ships of France, Spain, Holland, and America were assisted with Englishmen, but every species of invention went forwards in foreign dock-yards: and foreign manufactories were improved by English fugitives, to the great detriment of this infatuated country. It is said, *a kingdom divided against itself cannot stand*:—the situation of distressed Englishmen is such, that the Dey of Algiers might hire enough of them to invade their own country.

Let us now consider the different ways and means a man has of getting out of prison. The bankrupt laws hold out their signal of invitation, a certificate; these laws are certainly very just in their principle, and owe their authority to that wise prince, King James I. who so well knew the ill consequence arising from imprisonment; and what little authority the courts had to confine debtors, that without consulting Parliament, of his own accord, in the first year of his reign he cleared all the prisoners by proclamation.—The bankrupt

laws the king had a principal hand in framing ; but their meaning is perverted to answer the purpose of extortion.

The meaning and intent of the bankrupt laws is, that an insolvent tradesman shall give public notice in the Gazette to the whole world, that he is insolvent ; and that he will produce an account of his effects, his profit and loss ; and not being able to satisfy the whole of his creditors' demands, he will give up his remaining property to his creditors, for their benefit ;—three different meetings are allowed on the business, and at the last meeting the bankrupt is sworn to the truth of his accounts : if the creditors present cannot prove a fraud, they are then to sign a certificate that the bankrupt has conformed, in every respect, to the bankrupt laws ; which certificate is a discharge from any action at law against this insolvent tradesman ; and so equitable is the spirit of the laws, that during the time a man is to answer to the third summons, he is to be maintained, together with his family, at the expence of his creditors ; and they not being able to prove any fraud, make an allowance to the bankrupt on all the property he produces.—But now
in

In what manner are these noble laws administered? they are sold to every purchaser, and he who can afford (no matter with what injury to others) to spend the most money, has the best chance: at all events, every customer has some chance of getting a certificate, which will clear him from his embarrassments.

A bankrupt-monger in the King's Bench prison who had done a great deal of business in the court of Chancery, met with a Yorkshireman, a fellow prisoner, who had no prospect of getting his liberty, but had nevertheless brought some money with him, struck a bargain beneficial to both parties, which was, that the Yorkshireman should find money, and the bankrupt-monger wit: accordingly a commission of bankruptcy issued, declaring them both coal merchants of a certain place; two Jews were employed as assignees, with a friend or two to make up the business; the certificate was signed, and the different creditors were summoned to shew cause why the parties should not be discharged out of custody. The creditors, who did not understand this proceeding of a court of equity, by the advice of their attorney petitioned

tioned the court of Chancery; but the bankrupt-monger followed up another petition in *so proper a manner*, that the two bankrupts obtained their liberty; and all the satisfaction the creditors got was, that though they might understand something of law, they were not deep enough to comprehend equity.

It seems the expence on a commission of bankruptcy is sixty pounds, which the creditors must pay, although they are obliged to put up with two shillings in the pound—it does not seem a bad trade, the stamping the broad seal, for whether the journeyman or master does it, there is a comfortable five guineas every time it goes down, which at only ten times a week, is sufficient for a dealer in *equity* to smile at the profits. The business of Imprisonment for Debt, going hand in hand with every possible means of relief, whatever administers to it, makes it worth while to keep under every attempt to restore the constitution to its original purity, which would not allow of plunder and extortion in courts of law and equity.

We must take notice of what other means there are left for debtors in confinement to obtain their liberty.

liberty. The Thatched House Society have discharged about twelve thousand debtors from prison, and are in possession of very hard cases; and, by their late secretary, published such a dreadful account of the evil effects of Imprisonment for Debt, that every one supposed they would have heartily concurred in abolishing so great a national evil; instead of which, they aim at qualifying it. *It is an evil not to be qualified*; it is a wen on the neck of the British constitution, that requires the knife of a skilful surgeon to cut clean away. Lord Beauchamp aimed to cut a slice off, by his bill to prevent arrests under fifty pounds, and got it through the Commons; but the law department told the minister they would impeach him for his manifold transgressions, if he did not stop it: the minister sent for the pensioners of the upper house, who at length agreed to curtail it down to ten pounds; which may have done some good, but has ruined a worthy taylor and three honest lawyers. It seemed before that time, a taylor had a hint given him by an attorney of the Marshalsea, that by advertising for customers, on credit, he might get plenty of business, and that he would have a bailiff to carry home

home the cloaths; when, if the customer did not pay ready money, the bailiff should arrest him; which should be so managed by all parties, that the taylor should be secure: but a Borough clink attorney understanding the lucrative trade going on, persuaded the taylor to open a shop within his jurisdiction; and got a share of his custom: this getting wind to a lusty attorney of the Exchequer, he offered the taylor a guinea for every cause he put in his hands; so issuing a *quo minus* returnable the day the defendant was taken, he was obliged to have the writ renewed, or else go to Newgate; the *quo minus* monger, by this means, getting the profits on two writs instead of the other's one. The consequence of Lord Beauchamp's bill has been this, that the taylor is obliged to do slop-work; the two attornies of the Marshalsea and Borough clink have been obliged to buff notices; and as for this *quo minus* attorney (who was formerly a butcher) he is obliged to keep a chariot, to make people believe he does as much business as before: it is said, however, in his favour, that debts of about five guineas, with his Exchequer copies, he in general

eral takes the defendant in execution, and makes him pay fifteen pounds costs.

I must, however, give Lord Beauchamp credit for his humane intentions; his lordship well knew the great influence of the law department; and as he thought he could not serve his country in so effectual a manner as he could wish, was nevertheless happy to be able to give some check to the bloodhounds of the law.

There is now in the nation a spirit of qualifying: a few men of mere outside appearance of humanity, wish to establish another *star chamber*; where debtors who are fraudulent, and creditors who are avaricious, may send the grist; the *cloven foot* I think may easily be perceived; and as the evil of Imprisonment for Debt is the greatest now extant, may that man be deemed an enemy to his country's welfare who attempts to gain emoluments from the bowels of the distressed, by keeping up a practice contrary to the law of God and nature?

We will now remark on what other means there are of getting out of prison, besides the alluring sign of the bankrupt certificate. When bail is given to the sheriff, it must pay toll in court, consequently

frequently it is, to be justified in Westminster Hall, before fuller grown wigs than what the bailiffs dare wear; the custom is to give notice to the plaintiff's attorney, when the business is in general conducted in this manner: a notice bearer employs an undertrapper to appear before the plaintiff's door, who being there placed, says he is the person asked for, on which, the notice is served. It is true, the plaintiff's attorney, if he has any hint of it, puts his client to five guineas expence on this business; but the court, the counsel, and the bail, understanding one another, the business is settled to the satisfaction of the defendant; and the plaintiff, when he pays his attorney, understands that it is "*the uncertainty of the law.*"

But now for those who have not money to take advantage of the enticing loop-holes of the law; here humanity feels a just indignation. To behold a countess of France in her own right, who has lived in the most respectable manner, a debtor, confined in a ward in Newgate, with a dozen of infamous women (who were perhaps all virtuous before they went there) obliged to sleep in an open ward, and for a serenade, bear with their infamous language,

language, drunkenness, and abuse; with men sleeping in the same place, must surely rouse the feelings of every humane mind!—To see a gentlewoman in the King's Bench, who has done no other crime than giving a fortune to an amiable daughter that married a knave [of an attorney, and who had no more gratitude than to send his mother-in-law to prison, that he might ill-use his wife; with many most deplorable and heart-rending cases of the female sex, are sufficient to make the name of Englishman rank with cowardly fool:—Britons! if you are so degenerate yourselves, to bear with extortion and oppression, have ye no regard for the female sex; whom God has given as your greatest comfort on earth, and who look up for protection to you?—France, that bows to the sword of despotic princes, protects her females. A brave officer in France would dispute the will of the Grand Monarch should he attempt to insult a female; but in England, women of all ranks are abused by the lowest of mankind with impunity.

I must now take notice of another way of relief to some. The lords act it seems was drawn up, and intended to release all persons who would give
up

up their effects to their creditors, and who did ~~not~~ owe more than one hundred pounds ; but the lawyers could not bear even this bill to pass ; they therefore clapped an *If* to it, like a wart on a pretty woman's face, which says, if the creditor will not consent to his debtor's liberty on this condition, then he shall allow four-pence a day : a debtor now must be charged in execution, that is after perhaps twelve months confinement, he sues for these groats, when he has not a shilling to give his creditors ; the consequence of which is, that some creditors out of revenge pay the groats, and keep the debtor in prison, who ~~must~~ then grumble out his days on four-pence a day :—some will not pay it ; in which case, a debtor walks out in a thread-bare coat.

All the different reliefs to debtors in prison seem to be these ; the Bankrupt Certificate, the Thatched House Society, the Lords Act, the Bail Mongers, the Notice Buffers, and Death.

One time the prisoners in the King's Bench, being fearful of an act of insolvency not passing ; and imagining that Molock had more influence in Parliament than the Bible or New Testament, they

they drew up a petition, begging his assistance, and sent it by some of their friends; who having sent it in to his lordship, the saint smiled at the idea, and sent out this mild answer, "*they may go about their business.*" This answer put the poor prisoners in the dumps; the bill was thrown out of Parliament, and the prisoners thought there could be no relief; but one more sagacious than the rest, proposed to petition the seat of justice and mercy: another petition was soon ready, with five hundred names to it; and a certain nobleman who is not afraid of the lace on a man's coat, presented it at the ceremony of bowing, presenting, and retiring being over, the ——— turned to a grinning lord that stood at his elbow, and said, he—he—he, my lord, the prisoners in the King's Bench are mad! I'll send Doctor Monro to them.—This passed for wit among court lords. The petition was handed down to the kitchen, the cook spread some butter over it, and clapped it on a piece of roast beef:—but it seems, *Providence does not approve of such unfeeling conduct*, the poor prisoners were obliged to attempt the *wise* method of blowing up the wall of the prison.

On the subject of insolvent acts, I must observe, that they have been allowed to be acts of necessity ; that is, that a public evil exists, which an act of insolvency is to remedy ; then, if a public evil does exist, why does not Parliament remove it at once, and not tamper with a fore until it comes to a mortification ? Times, by mismanagement, are such, that a learned lord declared, was there to be an act of insolvency, the shop-keepers would all run from their shops to take the benefit of it ; and that were the prisons all clear to day, they would be full again in three months.

I will now revert back to the two different ways of suing for debt, the legal, and the illegal, and then draw those conclusions, which will close this important subject for the present. But, having treated on Imprisonment, I cannot avoid taking some notice of men confined for criminal offences : a man is often cleared at the sessions in the Old Bailey of the crime laid to his charge, and honourably acquitted ; but has, notwithstanding, suffered three months imprisonment in irons, and been subjected to every misery the prison affords : to fetter a man, to hang heavy chains about him before

fore he has been convicted of any offence, is contrary to law; and some gaolers have been fined for it: but as I know a man who expects to see all the fetters in the land turned into plough shares, and every man employed in honest industry, I avoid for the present taking notice of the *bloody bue* of our penal statutes, so contrary to the law of the land: only one remark I think necessary; which is, that in the great empire of China, it is an established maxim, that when a crime of magnitude is committed, the Mandarin of the province shall be punished, because the law commands him to take care of the morals of the people; and as God has given to every country the means of subsistence, it is a high offence to magistracy that men should commit crimes through distress.

The two different ways of proceeding for Debt are these, the constitutional law for recovery of debt begins with a summons, and ends with an execution on the defendant's effects, which pays debt and costs: but it may be asked, what if the defendant does not obey the summons? the law in that case, issues a *distingas*, commanding the

sheriff to distrain from time to time the defendant's property, until he obeys. Another question may be asked, what if the defendant has no property? the law then punishes a fraudulent conveyance of property; but unless that can be proved, it does not presume to confine the person of the debtor; if it did, the confinement would be absolute according to the nature of the debt: it would say for a debt of ten pounds, so long confinement; for a debt of a thousand pounds, so much longer; making the detriment accruing to the creditor bear a proportionable punishment to the debtor, in cases of absolute fraud or wanton wastefulness, there and there only the law provides a punishment suitable to the offence; but the adage, which is an old one, remains in full force—"A prison pays no debts"—besides, the person of every man is essential to the service of the king and country, as likewise for the maintenance of his family; so that what could at best but give satisfaction to a creditor, that of seeing a debtor in prison who had injured him, as a punishment he justly merited, would at the same time have deprived the king and country of his service, and the debtor's family,

family, who might not have had any hand in his imprudences, would be without his labour to support them; whilst he, by the compassion of some, and perhaps the industry of a worthy wife, might live a life of indolence and profligacy. Our wise and great ancestors have, therefore, established the liberty of the debtor's person on these three noble and just principles, "*that he may serve the king in his wars, cultivate the ground, and maintain his family.*"

Now let us consider the law as at present practised, which begins with arrest, and ends with imprisonment. The outset of this practice is so repugnant to justice, that it is obliged to be covered with fiction; it means a security to the creditor, but it nowhere forces it: the bail-bond only says, if the defendant is condemned in this action he shall render himself to prison, or else the bail are to do it for him: but will any reasonable man suppose that after the process of a law suit, when a man is not able at the conclusion to pay the condemnation, that the sending him to prison will put him in better circumstances? The prisons afford harbour to many men whose breasts are filled with indignation at the pro-

cess of imprisonment, and who would rather spend their small remains of property there, than give it the creditor who has been his ruin ;—and to encourage debtors to litigation, the rules of the King's Bench and Fleet prisons are adapted for all those who would sooner spend money in law, than pay their creditors : whilst on the other hand, the creditor having been led to this manner of proceeding by the advice of his attorney, is sorry when it is too late. There are many creditors at this day, who hold their debtors in confinement, that would gladly give them their liberty, if they would only pay part of their attorney's costs, and forgive them the debt : yet these creditors, who are some of them sensible and humane men, but led into error by their attornies, feel so much the loss of ready money for large bills on account of the suit, that they think their debtors put them to expence out of wantonness : the case is merely this, that neither plaintiff nor defendant understand the law ; a resentment takes place in both their minds, and it is not to the profit of the two attornies to settle it. There are however a few respectable attornies, that will not arrest. When Messrs. P. and G. of Gray's-Inn,

Ann, told a worthy young clergyman, that they had orders to arrest him, but they always made it a point instead of it, only to send a letter, and would settle upon the best terms in his power; and then took his notes at a date the clergyman could pay it with ease to himself—I own, the gentleman-like conduct of these respectable attornies, took off a great deal of the edge of resentment against the whole body of lawyers.

The cause I have given between William Burford and Charles Long, as removed by *writ of error* from the court of Common Pleas to the King's Bench, is a specimen of the tedious, fictitious, expensive, and uncertain manner of our present proceedings for debt, begins with oppression, and ends with expence, disappointment, and revenge:—the manner the law is laid down by a summons causes no anger to arise, is not expensive or litigious, and ends in general to the satisfaction of both parties. Let reason then guide the judgment of mankind, and let that spirit of grasping, which tramples down all law sacred and human, give way to the principles of justice and humanity; the wealth then that flows into the pockets of needy

and bad principled attornies, will circulate in its proper channel, and friendship and mutual assistance will take place of resentment and injury.

What apology, therefore, can be made for the keeping up this unconstitutional, oppressive, and injurious practice of Imprisonment for Debt? the only one is what is given me by a wit of the law in behalf of himself, and all others concerned in the business.

“ Sir,

“ I do not deny Imprisonment for Debt to
“ be unconstitutional and oppressive; but it is a
“ practice of long standing, and is very beneficial
“ to us in general: the creditors and debtors concerned in this practice are knaves and fools; the
“ knaves keep out of prison, the fools go in.—
“ Nine parts out of ten of his majesty's subjects
“ live beyond their incomes, and the frequent executions entered into the houses of the peers and
“ commoners, plainly shew, that was not their persons privileged from arrest, it is probable the
“ Parliament of Great Britain might be held in
“ the King's Bench prison. This being a trading
“ and commercial country, gain is the principle
“ that

“ that actuates the minds of the people ; and fraud
“ and deceit prevails throughout the kingdom.
“ The wholesale trader gets rid of damaged goods
“ to the poor retail dealer that wants credit ; and
“ the brewer sells bad beer to the publican that
“ can't pay. Arresting for debt is meant, by
“ distressing a man, to make him or his friends
“ raise the money ; and as for the loss other cre-
“ ditors may sustain, that is no part of the bu-
“ siness of a tradesman ; there is a lack of honesty
“ in the nation, and I do not see why we are not
“ to profit as well as others, by the vice and folly of
“ the people. Besides, what are we to do, being so
“ numerous a body, if Imprisonment for Debt is set
“ aside ? We cannot get into Parliament and re-
“ ceive pensions from the minister, because the
“ number of members are limited ; we cannot get
“ into the army, because the constitution does
“ not allow of a standing army in time of peace ;
“ we cannot get into the church, because the
“ heads of the clergy have got all the good livings,
“ and the curates are all starving ; we cannot turn
“ merchants and wholesale traders, because one
“ half of them are already ruined by the American
war,

" war, and the other half live upon paper credit ;
 " we cannot turn retail shop-keepers, because they
 " are all insolvent from Hyde-Park corner to
 " Whitechapel church, and are obliged to bear
 " the burthen of the taxes ; we cannot turn bank-
 " ers, because the people won't trust us ; we can-
 " not get into public offices, because there are
 " more there already than there is occasion for.

" In short, by the knavery, folly, extravagance,
 " dissipation, and imprudences of the people, we do
 " not get less than three millions of money every
 " year, through our several branches ; and we ne-
 " ver will consent to set the practice aside, unless
 " you will point out how we may live as well as we
 " do at present ; and our influence in Parliament
 " is sufficient to prevent any measures of your's
 " from taking effect : and as for the people, if
 " they have not virtue sufficient to preserve their
 " laws *entire*, the body politic is to be considered
 " as a dead carcase, which flies of every sort have
 " a right to feed upon. " I am, Sir,

" Your most obedient

" Humble Servant,

" LATITAT:"

How

How far the picture held out by this facetious limb of the law bears a resemblance to the situation of the country, must be left to every man's own opinion; but that the law department is altogether a numerous body, and like the locusts of Egypt, devour the fruits of the land, I think must be allowed; but the last position, "*that if the people have not virtue sufficient to preserve their laws entire, the body politic is to be considered as a dead carcase, which flies of every sort have a right to feed upon,*" is, I must confess, a convincing truth.

Montesquieu, in his Spirit of Laws, after observing the grandeur to which Rome, Sparta, and Carthage had arrived, all famous for their liberties, says, but when dissipation and vice became predominant, they fell; and seeing the English nation follow exactly their steps, he concludes it will fall likewise. It seems Sir William Blackstone felt himself hurt at the observation of this great writer, and by way of an apology, says, "This celebrated writer should have recollected *that Rome, Sparta, and Carthage, at the time when their liberties were lost, were strangers to the trial by jury.*"

But

But in answer to Sir William Blackstone, if a jury is to be made subservient to the views of a judge, juries then are as great an evil to a nation as a Parliament, that lay four times the taxes on the people which a despotic prince would do. There is a doctrine broached, that a jury is not a judge of law, but of fact: thus a man is brought into court for breaking an egg; the jury tell the judges they do not see any guilt in a man's breaking an egg; the judges say in answer, that is not their concern, they are only to find the fact. Accordingly these wise men of Gotham brought in their verdict, *guilty of breaking the egg*; the judges tell them they are right, and then pass judgment in mercy upon the man, that he shall suffer five years imprisonment, and give good security never to break another egg. In respect to debtors, the jury find a verdict for the plaintiff, that the defendant is condemned in two hundred pounds debt, and fifty pounds damages, the judges pronounce the law, that the debtor shall lie in prison for the remainder of his life, and the plaintiff lose both debt and costs. The jury, when a poor man is in prison, and cannot employ an attorney to defend his

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